DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

November 13, 2018

To all parties:

Please find enclosed a copy of the proposed decision prepared by the Administrative Law Judge ("ALJ") in this matter. This is being provided to all parties pursuant to Government Code section 11517(c)(1), and the proposed decision is hereby filed as a public record.

PLEASE NOTE: This proposed decision has not been adopted by the Department. The Director has up to 100 days from the date it was received from the Administrative Hearing Office to act on the proposed decision. Such action may include, among other things, adoption or rejection of the proposed decision. (See Government Code section 11517(c)(2).)

There is no provision in the Government Code that specifically authorizes parties to submit written comments to the Director regarding the proposed decision. However, there is also no restriction in the law that prohibits parties from doing so, and it is not uncommon for parties to submit such comments, identifying asserted errors or flaws in the proposed decision.

The Director is limited to reviewing the proposed decision based upon the record developed at the hearing. As such, if you do choose to send comments, the Director can only consider them to the extent that they identify alleged error based on the law and/or on the evidence presented at hearing. In addition, **any comments should be sent to the Administrative Records Secretary and must be served on all parties** (which includes the attorney representing the Department at the hearing) and be **accompanied by a proof of service** establishing that this was done. Failure to do so will result in the comments being considered an *ex parte* communication, which is prohibited pursuant to Government Code sections 11430.10, *et seq.*, and the Director will not review such comments.

Although proposed decisions are typically acted on within 30 to 60 days following receipt, action may be taken earlier than this. As such, if you do decide you wish to submit comments, you should do so promptly. Action on proposed decisions will not be delayed awaiting receipt of comments.

Whether or not comments are submitted, parties have all rights to request reconsideration (Government Code section 11521), to appeal a decision to the ABC Appeals Board, or to pursue such other legal remedies as provided by law.

Sincerely,

Mark Kinyon

Mark Kinyon

Administrative Records Secretary
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

SS/ABIS

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Costanzos Genco Olive Oil Company, Inc. DBA Toby and Jacks 764 9th Street Arcata, California 95521-6206 Respondent	File: 48-582810 Reg.: 18086874 License Type: 48 Page Count: 455 Reporter: Carli McKenny-CSR #14086 Atkinson Baker
On-Sale General Public Premises License	**PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Eureka, California from September 25, 2018 through September 28, 2018.

Colleen Villarreal, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Patrick Griego, Attorney, represented Respondent Costanzos Genco Olive Oil Company, Inc., a corporation (Respondent).

The Department seeks to discipline Respondent's license pursuant to seventeen allegations in the accusation on the grounds that:

(1) On or about October 19, 2017 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron(s) to possess, within the premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11350;
(2) On or about October 19, 2017 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron Scott Gamar aka "Scoot", to sell, furnish, or offer to sell or furnish, within the premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11352;

(3) On or about October 19, 2017 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron(s) to possess, within the premises, a controlled substance, to-wit: MDA amphetamine, in violation of California Health and Safety Code section 11377;

(4) On or about October 19, 2017 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron "Haven" to possess, within said premises, a controlled substance, to-wit: MDA amphetamine, for purposes of sale, in violation of California Health and Safety Code section 11378;

(5) On or about October 19, 2017 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron "Haven" to sell, furnish, or offer to sell or furnish, within the premises, a controlled substance, to-wit: MDA amphetamine, in violation of California Health and Safety Code section 11379;

(6) On or about October 19, 2017 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron Scott Gamar aka "Scoot" to sell, furnish, or offer to sell or furnish, within the premises, a controlled substance, to-wit: MDA amphetamine, in violation of California Health and Safety Code section 11379;

(7) On or about October 19, 2017 Respondent-Licensee(s) knowingly permitted the illegal sale, or negotiations for the sale, of controlled substances or dangerous drugs upon the licensed premises in violation of California Business and Professions Code section 24200.5(a);

(8) On or about November 9, 2017 Respondent-Licensee's manager, officer or person holding 10% or more of the corporate stock, namely Nicole Costanzo, was within the licensed premises, an aider and abettor, as defined in Section 31 of the California Penal Code, in the selling, furnishing, or the offering to sell or furnish, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11352;

(9) On or about November 9, 2017 Respondent-Licensee's manager, officer or person holding 10% or more of the corporate stock, namely Nicole Costanzo, permitted patron Elijah Patrick Browning to possess, within the premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11350;

(10) On or about November 9, 2017 Respondent-Licensee(s) knowingly permitted the illegal sale, or negotiations for the sale, of controlled substances or dangerous drugs upon the licensed premises in violation of California Business and Professions Code section 24200.5(a);

(11) On or about January 25, 2018 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron Jeff Shields, Jr. to possess, within the premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11350;

(12) On or about January 25, 2018 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron Jeff Shields, Jr. to possess, within the premises, a controlled substance, to-wit: cocaine, for purposes of sale, in violation of California Health and Safety Code section 11351;

(13) On or about January 25, 2018 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron Jeff Shields, Jr. to sell, furnish, or offer to sell or furnish, within the premises, a controlled substance, to-wit: cocaine, in violation of California Health and Safety Code section 11352.

(14) On or about January 25, 2018 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron(s) to possess, within the premises, a controlled substance, to-wit: MDMA methamphetamine, in violation of California Health and Safety Code section 11377;

(15) On or about January 25, 2018 Respondent-Licensee's agent or employee Joshua Cuppett permitted patron Jasmine Oakeshott to possess, within said premises, a controlled substance, to-wit: MDMA methamphetamine, for purposes of sale, in violation of California Health and Safety Code section 11378;

(16) On or about January 25, 2018 Respondent-Licensee's agent or employee Joshua Cuppett was within the licensed premises, an aider and abettor, as defined in Section 31 of the California Penal Code, in the selling, furnishing, or the offering to sell or furnish, a controlled substance, to-wit: MDMA methamphetamine, in violation of California Health and Safety Code section 11379; and

(17) On or about January 25, 2018 Respondent-Licensee(s) knowingly permitted the illegal sale, or negotiations for the sale, of controlled substances or dangerous drugs upon the licensed premises in violation of California Business and Professions Code section 24200.5(a);

In each of the above seventeen allegations in the accusation, the Department further alleged that there is cause for suspension or revocation of the license of the Respondent in accordance with section 24200 and sections 24200(a) and (b) of the Business and Professions Code and that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b) of the Business and Professions Code. (Exhibit D-1)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on September 28, 2018.

FINDINGS OF FACT

1. The Department filed the accusation on May 2, 2018. (Exhibit D-1)

2. The current configuration of the license for the Licensed Premises as a corporation has been in place since August 8, 2017 but the Licensed Premises was previously owned by Salvatore Costanzo (S. Costanzo) for many years prior to the change to a corporation. S. Costanzo is one of the principals of the corporation. The Respondent also holds a type 48 license for Sidelines Sports Bar, a type 48 establishment located two businesses to the right of the Licensed Premises at 732 9th Street in Arcata, California. (Exhibit D-2) There is no record of prior departmental discipline against the Licensed Premises that was introduced in this matter.

3. In September 2017, Department Agent Samantha Scott (Scott) began an assignment as part of a team investigating complaints of narcotics activity made against the Licensed Premises. As part of this investigation, a decision was made to utilize Scott and other undercover officers working as part of the Humboldt County Narcotics Task Force to investigate these allegations. Scott had been a Department agent for 1½ years and had prior experience as a Placer County Sheriff's deputy and correctional officer before joining the Department as an agent.

4. During her academy training, she received narcotics training. In addition, she received approximately 100 hours of field and course work related to narcotics investigations. From this training, Scott learned to recognize how illicit drug transactions occurred and became familiar with the appearance and packaging of various controlled substances sold in face to face transactions and the common jargon used to describe controlled substances in street transactions.

5. On September 14, 2017 at approximately 5:45 p.m., Scott entered the Licensed Premises in an undercover capacity. Additional officers from the task force accompanied her. Scott sat at the fixed bar on a barstool and ordered an alcoholic beverage. There were two bartenders working. A bartender who was later identified as Michael Cahill (Cahill) began to speak with Scott. (Exhibit D-4) Scott observed a person by the name of Jeremy Smith (Smith) stash a backpack behind the bar area even though he did not appear to be an employee. Scott went to the pool table area and interacted with multiple people. She then went out onto the back patio. Scott was told by a Licensed Premises security guard that she had to leave her beer inside. Scott saw people smoking what appeared to be marijuana and she saw people pouring what appeared to be distilled spirits into water bottles in the back patio area. Scott observed what appeared to be multiple hand to hand

narcotics transactions from the back patio adjacent to a nearby taco truck. Scott left after having further interactions with patrons.

6. Scott returned to the Licensed Premises on October 6, 2017. She was accompanied in an undercover capacity by other officers of the task force. Cahill took Scott's drink order from the fixed bar. Cahill continued to work in the area while Scott sat there and struck up a conversation with a patron who identified himself as Sandy (Sandy). After Scott asked what Sandy did, he volunteered that he cut and sold marijuana. Scott asked Sandy if he sold "white" which is a slang term for cocaine. Sandy appeared to understand what Scott was referring to. Sandy handed his phone to Scott and had her call his number. After this interaction with Sandy, Scott went over to the pool table area in the Licensed Premises and talked with the patrons that were there. One of the pool players talked about his 900 acre marijuana grow and that he was a businessman. Scott asked him if he sold "white". He excitedly relied "That's my game!" and then showed Scott pictures of a white, powdery substance on his phone.

7. Scott spoke with an individual named Aster Castropaez (Castropaez) while in the Licensed Premises. She asked if he would be able to obtain cocaine for her. He apologized and said he did not have any on him. He also asked Scott if she did "acid" during their discussion. Castropaez left the Licensed Premises with another person after this conversation. Scott walked out in front of the Licensed Premises and stood near the front door. She saw Cahill smoking a cigarette. A person by the name of Jeff Shields (Shields) was standing nearby smoking a marijuana pipe. Shields offered Scott the pipe but she declined and asked him if he was able to get cocaine. Shields tried to convince Scott to walk around the corner with her. Scott declined and then went back into the Licensed Premises. Cahill had gone in a few moments before after extinguishing his cigarette.

6. Scott spoke with Castropaez again inside the Licensed Premises and he said he could likely get someone to sell her a "$40" which Scott understood to be an amount of cocaine for $40. Castropaez then exited the Licensed Premises and went onto the plaza. Scott walked over to Sideways which was two doors over. She ran into Shields and asked him if he was able to obtain cocaine for her. Shield stated "not yet." Scott departed the area shortly afterwards.

7. Scott returned on October 19, 2017 at approximately 8:30 in the evening. Scott sat at the fixed bar and ordered a drink from Cahill. There were three men seated next to her. One of the men introduced himself as Corona (Corona) and invited Scott to do a shot with him. Scott declined by saying she was tired and needed a "line" instead. Corona initially appeared offended by Scott's response but he later apologized and said that he did sell

cocaine. Corona later invited Scott to his home to do a line of cocaine for free. Corona appeared very intoxicated during their discussion. Corona later stumbled out of the Licensed Premises.

8. Scott remained at the fixed bar and observed Joshua Michael Cuppett (Cuppett) come into the fixed bar area and begin bartending duties. (Exhibit D-6) Cuppett checked with Scott to see if she needed a drink. Scott responded that she was tired and needed "white." Cuppett remarked that Corona was someone she could go to for cocaine and if he came back he could provide it. Cuppett said he would tell Corona that Scott was "good" in reference to a cocaine sale. Cuppett said he would look for someone who might be willing to sell to Scott. Scott subsequently saw Cuppett talk with a person who was later identified as Scott Clinton Gamar (Gamar) and went by the nickname "Scoot."

9. Scott began to talk with Gamar at the fixed bar. Gamar said he cut marijuana and transported it to Sacramento. Scott told Gamar she was interested in obtaining cocaine. Gamar responded "I have some" and he gave Scott a bindle while they were at the bar. Scott asked him for the cost. Gamar said it was free but that she had to use it in the bathroom. Scott went to the bathroom and photographed the bindle. (Exhibit D-8) She then turned it over to one of the task force officers for booking. The bindle of suspected cocaine was later weighed and found to be .4 grams. (Exhibit D-26) Miller tested the substance using the TruNarc device. It was found to contain cocaine hydrochloride. (Exhibit D-27) Scott returned to where Gamar was seated. Gamar invited Scott to go to another bar. Scott declined the invitation and Gamar then left.

10. Scott told Cuppett about the transaction with Gamar. Scott asked Cuppett if he knew Gamar. Cuppett said he did not know him. Cuppett said that Corona was not answering his texts. Cuppett then said Corona is not coming back. Gamar wound up returning to the fixed bar of the Licensed Premises. Scott told Gamar that the cocaine was good and she asked him where he got it from. Gamar described the person and Scott saw someone who matched Gamar's description.

11. Scott approached this person and struck up a conversation. The individual identified himself as "Haven" (Haven). Haven said he sold cocaine and "Molly" which is a slang term for MDA amphetamine, a controlled substance. Haven said he was waiting for cocaine but that he had Molly. Haven offered to have someone bring cocaine for Scott for $100 or $60 for lesser quality cocaine. Haven directed Scott to walk out of the Licensed Premises to near the taco truck in the back area. They walked to that area together. Gamar joined them and remarked that Haven was the person Gamar got the "blue and white" from. Gamar then gave Scott a blue pill. Gamar remarked that he was giving it to Scott because he liked her. Scott told Gamar that he was creeping her out. Gamar then departed.

Scott retained the blue pill and turned it over to Miller for booking and testing. Because of its coating, Miller had to crush it before testing. (Exhibit D-28) Miller tested the blue pill using the TruNarc device and found that it was MDA amphetamine. (Exhibit D-34)

12. Haven remained there with Scott. Scott asked to buy Molly from Haven. Haven then took out a bag with a powdery substance in it and offered Scott a taste. Scott declined and said she was not going to use it there. Scott paid Haven $40 and she secured the baggie and the blue pill on her person. The transaction took place while they were standing approximately 5 feet away from one of the Licensed Premises security guards. Scott reentered the Licensed Premises and spoke with Cuppett again. She told him about the transaction and asked if she could trust Haven. Cuppett pointed to some people in the Licensed Premises and said to ask them. He also remarked that they might be able to get Scott some "white." Scott did approach the people Cuppett pointed to but she was told by them that they could not obtain cocaine for her. Scott then exited and gave Department agent David Miller the baggie and the blue pill received from Gamar to test and book into evidence. (Exhibit D-8) The baggie from Haven was photographed (Exhibit D-29) and then tested with the TruNarc device by Miller. It tested as MDA amphetamine, a controlled substance. (Exhibit D-30)

13. Scott returned to the Licensed Premises on November 9, 2017. As she was walking in, Cahill walked in behind her. Scott greeted him. Department agent Bernstein (Bernstein) was already at the fixed bar. Scott and Bernstein introduced themselves as if they had just met. They both struck up a conversation about cocaine and hallucinogenic mushrooms. Cuppett arrived to tend bar at about 9:00 p.m. He hugged Scott in greeting when he arrived. Scott and Bernstein continued the subject of their conversation while Cuppett worked nearby. A person named Crawford (Crawford) came up to the fixed bar next to Scott and Bernstein. Scott spoke with Crawford and the subject of obtaining cocaine was brought up by Scott. Crawford responded that he could secure some. Scott asked how much and Crawford said he could get a gram. Crawford then began to text. Scott could see the name "Corona" on the telephone that Crawford was using. Scott then brought up the name "Corona" and Crawford said that he was his other "go to" in response. Scott then introduced Crawford to Bernstein.

14. Scott asked Cuppett about whether he knew Crawford. Cuppett said yes and called him "Anthony." Scott asked if he could be trusted and Cuppett said he trusted him but it depends on his source. Crawford and Bernstein departed to meet someone who Crawford described as a source. Scott remained in the Licensed Premises. At this time, Scott observed Nicole Taylor Costanzo (N. Costanzo) arrive. (Exhibit D-10) Scott had met her at Sidelines on November 8, 2017. The Department records of the Licensed Premises identified N. Costanzo as an officer and the Secretary of the corporation that held the

license of the Licensed Premises. Costanzo held a 15% share of the corporation in her capacity as the corporation's secretary.

15. N. Costanzo hugged Scott And asked her about her job hunt which had been a subject of their previous conversation. Scott brought up wanting to "party" and asked N. Costanzo if her guy was still around. N. Costanzo nodded yes. Scott walked over to the fixed bar with N. Costanzo who then introduced Scott to a person Scott later identified as Elijah Calvin Browning (Browning). (Exhibit D-11) N. Costanzo told Browning that Scott was looking for cocaine. Browning responded that he could get Scott an "8-Ball" which is a slang term for about 3.5 grams. Scott asked N. Costanzo whether Browning's product was "good" or if it was "cut". N. Costanzo replied "Nah, its good." Browning stated he had to take N. Costanzo somewhere. Browning took Scott's phone number and he texted his number to Scott. Browning left and returned a short time later. They met inside of the entrance of the Licensed Premises. Browning gave Scott a clear plastic baggie containing a powdery white substance that appeared to be cocaine to Scott. Scott paid Browning $100. Scott then departed and met with Miller to photograph the baggie (Exhibit D-12) and have him book the baggie into evidence. Miller tested the contents of Exhibit D-12 with the TruNarc device and they were determined to be cocaine hydrochloride. (Exhibit D-33 and Exhibit L-3)

16. Scott returned to the Licensed Premises on January 25, 2018 at approximately 10 p.m. Scott went to the fixed bar and sat on a barstool. She saw Cuppett and Cahill working at the bar of the Licensed Premises. Cuppett came over and spoke with Scott. Scott asked Cuppett if a male sitting nearby was Corona. Cuppett said "are you looking for the usual?" and then responded that the person was not Corona. Cuppett said he would find cocaine for Scott. Cuppett spoke with someone at the end of the bar. He returned and said the person did not have any. Cuppett later said that someone was on the way. An unidentified woman remarked to Cuppett that someone would be there in 10 minutes. Cuppett nodded after this remark.

17. Jeffrey Franklin Shields, Jr. (Shields) approached Scott and said that he heard she was looking for "some product." (Exhibit D-5) Shields then invited Scott outside to his van to obtain the cocaine. Scott declined this offer and she remained at the fixed bar. Cuppett later came over and asked if the transaction with Shields worked out. Scott said that Shields gave her the creeps. Cuppett asked for Scott's number and offered to do the transaction together after he got off of work. Scott and Cuppett exchanged numbers. Shields returned and apologized for his earlier exchange with Scott. Shields agreed to a narcotics deal to occur behind the Licensed Premises near the taco truck. A woman by the name of Jeanette DeWitt (DeWitt) had joined the conversation with Scott and Shields. She offered to go with Scott to the back for the transaction.

18. Scott went out back and DeWitt joined her shortly after. Scott met with Shields and Shields provided Scott a white piece of paper that was folded up. Scott paid $100 for the bindle that was provided by Shields. Scott went into the Licensed Premises restroom to secure the bindle. DeWitt and Scott discussed a concern that the product Shields sold might be "methy" which was a reference to it being a stimulant other than cocaine. Scott told DeWitt that she wanted to buy more coke.

19. Shortly after this remark, a woman who identified herself as "Carly" joined Scott and offered to buy Scott a drink. During their conversation, Scott took a selfie with Carly (Exhibit D-13) and later used it to identify her as Jasmine Cerise Oakeshott (Oakeshott). (Exhibit D-14) Oakeshott at one point walked over to the rope to the fixed bar of the Licensed Premises and ducked under it. Scott asked Oakeshott if she was an employee. She responded that they would never trust Oakeshott there. Cuppett came over and hugged Oakeshott. Cuppett remarked "is she good to go?" to Oakeshott. Oakeshott then put her arm on Scott's shoulder and asked her what she wanted. Scott said that she wanted "just some coke" in response. Oakeshott said she did not have any right then but that she had a guy coming with some in 10 minutes. Oakeshott asked Scott if she used Molly. Scott responded "sometimes."

20. Oakeshott got a text and left momentarily. She returned with two females. Oakeshott retrieved her purse from behind the bar and then walked towards the bathroom. Scott followed Oakeshott. Scott went into the bathroom and she could hear Oakeshott giving instructions to the two women. Oakeshott put crystals of what appeared to be MDMA methamphetamine, in Scott's hand. Scott said that she wanted to use it with her roommate later. One of the women took cellophane from a cigarette package and gave it to Scott to use as a baggie for the crystals. Scott put them in the cellophane to secure it. Scott left the Licensed Premises after this exchange.

21. Scott met with Miller to process the evidence she received that day. The bindle that was received from Shields was photographed as it was opened and the contents weighed. The weight was determined to be .7 grams. (D-15, D-16, and D-17) Miller then used the TruNarc device to test the powdery substance that was inside of the paper bindle. Scott photographed the scan result. (Exhibit D-18) The TruNarc scan report showed the substance to be cocaine hydrochloride. (Exhibit D-19)

22. The crystals that were received from Oakeshott were also photographed as they were opened and the contents weighed. The weight was determined to be .1 grams. (D-20 and D-21) Miller then used the TruNarc device to test the crystals that were inside of the cellophane wrapper that Scott used. Scott photographed the scan result. (Exhibit D-22)

The TruNarc scan report showed the substance to be MDMA methamphetamine. (Exhibit D-23)

23. Department Agent Alan Aubuchon (Aubuchon) testified regarding the chain of custody in this matter and related case 18086872 (The Sidelines case) because Miller was medically unavailable as a witness. Aubuchon is an experienced peace officer from his time as a Department agent and Eureka Police Department officer dating back to 2007. Miller was the designated receiving agent for the evidence seized during this investigation and the Sidelines case during the same time period. Aubuchon was the designated second witness. Miller prepared the property receipts for the seized evidence when it was booked into the secure facility of the Eureka Police Department (EPD) that was provided for the Humboldt County Drug Task Force. (Exhibits D-19, D-20, D-21, and D-22 in the Sidelines case) These receipts documented the evidence seized by Scott and Bernstein during the transactions in this matter and the Sidelines case that were subsequently booked by Miller. Aubuchon reviewed them at the time they were prepared and checked their accuracy before cosigning the property receipts. Jeremy Hunter, the EPD Property Evidence Technician, acknowledged receiving the evidence from Miller for safekeeping.

24. The narcotics that were booked in this case by Miller from the sales that occurred were weighed and photographically documented during the course of the investigation to enable the correlation of booked evidence with the transactions that occurred. The seized narcotics were also tested by Miller using a TruNarc testing device. Because of the unavailability of Miller, Department Agent Chandler Baird (Baird) reviewed the TruNarc Scan reports that were generated by Miller and correlated them with the evidence booked in this matter and in the Sidelines case.

25. California Highway Patrol Officer Darron Drefke (Drefke) testified regarding the general operation and efficacy of the TruNarc device in this matter and in the related Sidelines case because Miller was medically unavailable as a witness. Drefke was one of the law enforcement officers on the Humboldt County Narcotics Task Force trained and qualified to use the TruNarc device. Drefke was aware that Miller was one of the other officers on the task force trained and qualified to use the TruNarc device. Drefke explained that in his training, he learned that the TruNarc device was designed to be able to deliver lab quality test results in field applications. Drefke explained that the TruNarc device is a Raman spectroscope[1] that is capable of identifying molecules contained in a

[1] Raman spectroscopy (/ˈrɑːmən/; named after Indian physicist Sir C. V. Raman) is a spectroscopic technique used to observe vibrational, rotational, and other low-frequency modes in a system. Raman spectroscopy is commonly used in chemistry to provide a structural fingerprint by which molecules can be identified. Raman spectroscopy was

library of known samples after a laser is applied to an unknown sample. The TruNarc device is hand held and has a cone where a laser is emitted after the device is activated. The cone is placed over the sample prior to the laser being activated. The refraction from the laser applied to the sample is then automatically checked against a library of known substances. The device will report if the wavelengths refracted back from the sample match substances that have previously been documented in the device's known substances library. Common street drugs are contained in the known substances database. The device is regularly connected to a network for software updates that also update the known substances library but the device does not otherwise allow for much interaction or discretion on the part of the user. The sample that is tested is unaffected by the use of the TruNarc device. The TruNarc device has a screen that shows scan results and also stores the results so that more comprehensive reports can be printed to document any field testing performed. Drefke identified Exhibit D-23 in the related Sidelines case as an example of a TruNarc Scan Report that would result from a test being conducted.

26. S. Costanzo testified in this matter and in the related Sidelines case. He testified that he was unaware of narcotics activity taking place at the Licensed Premises and that he did not condone this behavior. Because of his age and extensive health issues, (Exhibit L-3 in the related Sidelines case) S. Costanzo was having his son, M. Costanzo handle more of the day to day operations. The Licensed Premises and Sidelines were incorporated in January 2017 and at that time N. Costanzo and M. Costanzo were added as principals in the corporation. Employees were not allowed to drink or use drugs when they were on duty. All employees who were involved in the incidents that were investigated at the Licensed Premises were terminated if they did not previously resign. S. Costanzo has removed N. Costanzo from the corporation and is in the process of trying to have her removed from the license issued by the Department.

27. Former Arcata Police Chief Tom Chapman (Chapman) was called by the Respondents as a witness. He testified to his contacts with M. and S. Costanzo as being positive and that they were responsive to concerns. Chapman testified to his impression that the Licensed Premises and Sidelines were not particular problems that stood out to him.

28. M. Costanzo testified that he managed the day to day of the Licensed Premises and Sidelines. Drug use or sales have never been tolerated by the Respondent. He has participated in Department LEAD training and shares those materials with employees. (Exhibit L-5) M. Costanzo also encourages employees to participate in LEAD training when it is offered. The Licensed Premises maintains signage to remind patrons of

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discovered by Sir C.V. Raman in 1928, for which he received the Nobel Prize in Physics in 1930. (http://en.wikipedia.org/wiki/Raman spectroscopy)

applicable alcohol and drug laws, in particular, in relation to marijuana use. (Exhibit L-6 in the related Sidelines case) M. Costanzo testified to being completely blindsided by the allegations. Subsequent to the allegations in this matter and the related Sidelines case, the Respondent had cameras installed at the Licensed Premises.

29. Brian Wilson (Wilson) was called by the Respondent. He is currently a police officer with the Eureka Police Department but previously served as a security officer and the head of security at the Licensed Premises and for Sidelines between 2008 and 2016. He testified that the Licensed Premises had a policy of no tolerance of drug use or sales during his tenure. Persons were regularly kicked out of the Licensed Premises and Sidelines and not allowed back in if they were observed engaging in narcotics activity in either bar. He described seeing drug incidents "more than I could count" when asked about occurrences involving drug activity at either bar. Bartenders had the ability to ask the bouncers to remove people for drug activity. During his tenure, Wilson described having to apply Vaseline to the toilet seat covers in the bathroom to prevent people from using them to snort cocaine. Wilson regularly talked with M. Costanzo and S. Costanzo about security concerns during his tenure.

30. Arcata Police Department Officer Luke Scown (Scown) was called in rebuttal by the Department. Scown testified to having patrolled the Arcata Plaza from 2015-2017. The plaza is where both the Licensed Premises and Sidelines are located. Scown testified to extensive narcotics activity occurring on the plaza and that the Licensed Premises and Sidelines were a disproportionately large source of the calls for service as compared to other bars in the immediate area. In 2016 and 2017, approximately 25% of the calls to these locations referenced drug or narcotics activity. Scown himself has warned the Costanzos to keep certain people out of their locations. Scown did notice a slight downturn in calls for service when the Licensed Premises started hiring private security. Scown elevated his concerns regarding narcotics activity on the plaza to the chief of police level during his tenure in that assignment.

31. Karen Diemer, Arcata's City Manager (Diemer) also testified to her concerns about narcotics activity on the Arcata Plaza and her impression that the Licensed Premises and Sidelines were significant contributors to the problem activity that occurred there. Diemer testified that the Licensed Premises and Sidelines generated approximately 40% of calls for service on the plaza and that in a four year period ending in 2018 there were approximately 1300 calls for service to the Licensed Premises and Sidelines. She testified there was a meeting with business owners on the north side of the plaza, including M. and S. Costanzo, in January 2018, where these concerns were generally raised with the hope that solutions could be developed with the business owners like the Costanzos.

32. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

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

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

3. Business and Professions Code section 24200.5(a) provides that notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:

> (a) If a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" shall have the same meaning as is given that term in Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the Health and Safety Code, and "dangerous drugs" shall have the same meaning as is given that term in Article 2 (commencing with Section 4015) of Chapter 9 of Division 2 of this code.

4. Health & Safety Code section 11377(a) states that:

> (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may

instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

5. Health & Safety Code section 11378 states that:

Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:
(1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.
(2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d).
(3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.
(4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.
(5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.4. Health & Safety Code section 11350 (a) states that, except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

6. Health & Safety Code section 11379 states that:

(a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.
(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.
(c) For purposes of this section, "transports" means to transport for sale.
(d) Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory, accessory theory, or a conspiracy theory.

7. Health & Safety Code section 11351 states that:

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

8. Health & Safety Code section 11352(a) states that:

> Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

9. With respect to counts 1-7, cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b). These counts relate to Scott's October 19, 2017 encounters with Gamar and Haven at the Licensed Premises in the presence of Cuppett, the Respondent's agent or employee. The evidence established that Cuppett, a bartender in the Licensed Premises, took an active role in trying to help Scott secure narcotics. Cuppett spoke with Gamar before he approached Scott on October 19, 2017 in the Licensed Premises. Even prior to October 19, 2017 Scott had spoken with Cuppett about obtaining narcotics at the Licensed Premises. Scott spoke with Gamar, Haven and other patrons, in the immediate presence of Cuppett, about purchasing narcotics from them. The conversations were extended and they occurred at the fixed bar and in the front of the Licensed Premises. Scott spoke with Cuppett about securing narcotics and Cuppett took an active role in facilitating Scott's efforts to purchase cocaine and other drugs. Cuppett vouched for a number of the potential dealers in the Licensed Premises and called them by familiar names. Cuppett had a duty to not allow the possession or sale of controlled substances in the Licensed Premises. Under the circumstances of this case, when Gamar gave a baggie of cocaine and a blue pill that contained MDA amphetamine to Scott, Cuppett was permitting him to possess cocaine and MDA amphetamine within the Licensed Premises in violation of Health and Safety Code sections 11377 and 11350. The circumstances also conveyed to Cuppett that Gamar possessed these narcotics for the specific purpose of providing them to Scott in violation of Health and Safety Code sections 11352 and 11379. The sales transaction to Scott from Haven that was also permitted by Cuppett was in violation of Health and Safety Code section 11377, 11378 and 11379 because, while at the Licensed Premises Haven possessed MDA amphetamine, he intended to sell them to Scott, and he then completed the transaction. As an agent or

employee, Cuppett's actions and knowledge, under the circumstances of this case, are imputed to the Respondent and establish a violation of Business and Professions Code section 24200.5(a), as well. Even though this was the first day that sales to Scott were documented during the undercover investigation, the overall evidence established that a pervasive drug culture had already established itself at the Licensed Premises prior to October 19, 2017. (Findings of Fact ¶¶ 2-31)

8. With respect to counts 8-10, cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b). These counts relate to the November 9, 2017 encounter with Browning at the Licensed Premises that was actively facilitated by N. Costanzo, a 15% shareholder in the respondent's corporation. Scott negotiated the purchase of cocaine from Browning after N. Costanzo referred Browning to Scott to complete the transaction for Scott's expressed desire to purchase cocaine. Scott actually received a baggie of cocaine from Browning in exchange for money. The evidence established that S. Costanzo was familiar with Browning and his role as a dealer of cocaine. S. Costanzo actively assisted Scott in purchasing narcotics from Browning at the Licensed Premises. N. Costanzo had a duty to not allow the possession or sale of controlled substances in the Licensed Premises. Under the circumstances of this case, when Browning offered to sell cocaine to Scott, N. Costanzo was permitting Browning to possess cocaine within the Licensed Premises in violation of Health and Safety Code section 11350. The circumstances also conveyed to N. Costanzo that Browning possessed cocaine for the specific purpose of selling it in the Licensed Premises to Scott in violation of Health and Safety Code section 11351. The sale transaction that then occurred in the Licensed Premises was also permitted by N. Costanzo in violation of Health and Safety Code section 11352. As a shareholder and principal in the Respondent corporation, her actions and knowledge, under the circumstances of this case, are imputed to the Respondent as a whole and establish a violation of Business and Professions Code section 24200.5(a). This was a sales incident facilitated by a principal in the corporation and it was in addition to the overall evidence establishing a pervasive drug culture that had already established itself at the Licensed Premises even prior to the first documented sale on October 19, 2017. (Findings of Fact ¶¶ 2-31)

9. With respect to counts 11-17, cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b). These counts relate to the January 25, 2018 encounters with Shields and Oakeshott at the Licensed Premises that occurred in large part, in the presence of, and with the active participation of, Cuppett. Scott negotiated the purchase of cocaine from Shields in the presence of Cuppett after Cuppett referred Shields to Scott to complete the transaction. While the transaction was completed in the back of the Licensed

Premises, much of the negotiation for the narcotics transaction occurred within the confines of the Licensed Premises, after Cuppett set it in motion. Cuppett had a duty to not allow the possession or sale of controlled substances in the Licensed Premises. Under the circumstances of this case, when Shields possessed the cocaine to sell to Scott, Cuppett was knowingly permitting him to possess cocaine within the Licensed Premises in violation of Health and Safety Code section 11350. The circumstances also conveyed to Cuppett that Shields possessed the cocaine for the specific purpose of selling it to Scott in violation of Health and Safety Code section 11351. The actual sales transaction that then occurred just outside of the Licensed Premises was also permitted by Cuppett in violation of Health and Safety Code section 11352. Scott also received MDMA methamphetamine from Oakeshott in the bathroom of the Licensed Premises after their discussion in the presence of Cuppett. Oakeshott clearly had a close relationship with the Licensed Premises and Cuppett given her ability to go behind the bar and store her purse on January 25, 2017. Cuppett was clearly directly familiar with Oakeshott and the circumstances conveyed an awareness to Cuppett that Scott was contacting Oakeshott in furtherance of a narcotics transaction. While the transaction was completed in the bathroom of the Licensed Premises, much of the negotiation for the narcotics transaction occurred within the confines of the Licensed Premises in the presence of Cuppett. Cuppett had a duty to not allow the possession or sale of controlled substances in the Licensed Premises. Under the circumstances of this case, when Oakeshott possessed the MDMA methamphetamine that was provided to Scott, Cuppett was knowingly permitting her to possess MDMA methamphetamine within the Licensed Premises in violation of Health and Safety Code section 11377. The circumstances also conveyed to Cuppett that Oakeshott possessed the MDMA methamphetamine for the specific purpose of providing it to Scott in violation of Health and Safety Code section 11378. The actual transaction that then occurred in the bathroom of the Licensed Premises was also permitted by Cuppett in violation of Health and Safety Code section 11379. As an agent or employee, his actions and knowledge, under the circumstances of this case, are imputed to the Respondent and establish a violation of Business and Professions Code section 24200.5(a) based on the conduct of Shields and Oakeshott. This was now the third day of narcotics sales incidents documented by Scott during her undercover investigation at the Licensed Premises. This was in addition to the overall evidence establishing a pervasive drug culture that had already established itself at the Licensed Premises even prior to October 19, 2017. (Findings of Fact ¶¶ 2-31)

10. The Respondent has challenged the chain of custody and sufficiency of the evidence regarding the suspected narcotics seized in this investigation. Though Miller did not testify in this matter, other testimony and documents were received that established that the substances that were tested were the baggies received by Scott during the investigations. Further, the TruNarc device used by Miller to test the suspected narcotics

seized by Scott was established through the testimony of Drefke as being a sufficiently reliable source of testing, in combination with the overall evidence, to establish that the seized narcotics where the substances shown in the results by a preponderance of evidence. Drefke was trained and qualified in the use of the TruNarc device and he also testified that Miller was trained and qualified to use the TruNarc device. The device used Raman spectroscopy to test substances in the field against an existing library of controlled substance profiles. While the application to controlled substance testing in the field appeared novel, Raman spectroscopy itself is not new and novel and has been an applied testing procedure for many decades. Drefke's testimony credibly established that the TruNarc device was designed to be easy to use and that the device did not allow for much discretion or interaction. Scott testified, based on her training and experience, that the suspected narcotics received where consistent with what they were represented to be. Miller tested the suspected narcotics and in each instance, the TruNarc device concluded that the tested compounds contained the substances they were represented to be. Miller knew how to use the device, and Drefke credibly testified to the device's reliability and efficacy. While it would have been a far better practice for the Department to have the substances conclusively tested, the question before this court is whether the Department has established, by a preponderance of the evidence, that the baggies contained the controlled substances that were alleged in each count. It has. (Findings of Fact ¶¶ 2-31)

11. In this matter, Respondent has argued that the Department's reliance upon Business and Professions Code section 24200.5(a) is misplaced because there was insufficient evidence that the Respondent knew, or should have known of the drug transactions at issue. *McFaddin San Diego 1130 Inc. v. Stroh* (1989) 208 Cal.App.3d 1384 is instructive regarding the issue of whether constructive knowledge can be imputed to a license holder. In *McFaddin*, the Court of Appeal granted the petition of the license holder and reversed the order of the Board and the decision of the Department, based on facts found by the Department that the licensee did not know of the drug transactions at issue, and further had taken extensive preventive measures against them. It held that such evidence did not support a determination that the licensee "permitted" the illicit activity.

12. The Respondent's circumstances are very different than the license holder in *McFaddin* and Business and Professions Code section 24200.5(a) is directly applicable to the circumstances in this case. A pattern of illegal sales of controlled substances, to wit, cocaine, MDMA methamphetamine, and MDA amphetamine was established to have occurred. Imputed knowledge of this pattern of drug sales was established by the multiple instances of sales that occurred at the Licensed Premises over three separate days stretching from October 2017 through January 2018. Multiple employees of the Licensed Premises, including one of the principals, N. Costanzo, had relationships with and were

aware of the drug activities being perpetrated by the sellers inside of the Licensed Premises over the course of several months. (Findings of Fact ¶¶ 2-31)

13. Beyond the sales in this case, the Respondent was on more broad notice of an epidemic of drug activity taking place at the Licensed Premises and in the immediate area surrounding the Licensed Premises and at its adjacent business, Sidelines. There were extensive and disproportionate calls for service to both of the Respondent's establishments during the four years leading up to the January 25, 2018 date where Scott engaged in her last narcotics transaction at the Licensed Premises. Many of these calls involved complaints of drug activity and the Respondent was aware of this. Local law enforcement and the city manager had directly communicated with the Respondent regarding its concerns in this area. The Respondent's own security manager between 2008 and 2016 testified to the epidemic of drug activity in the Licensed Premises and taking drastic measures like smearing Vaseline on toilet seat covers to prevent people from snorting cocaine off of them. (Findings of Fact ¶¶ 2-31 and 2-24 in the related Sidelines case)

14. Despite this mountain of evidence that the Licensed Premises had grown into a problem location for narcotics activity, there was lax oversight by the Respondent regarding the actions of employees and agents of the Licensed Premises. The Respondent did not install cameras until after this case came to their attention through the filing of an accusation. The Respondent did not have written policies compelling employees to enforce the rules that the Respondent suggested were in place at the Licensed Premises. The Respondent's own employees and at least one principal in the corporation actively interacted with persons who were actively selling narcotics in the Licensed Premises. All four sales occurred, either in whole or in part, within the Licensed Premises. Scott had little difficulty in openly arranging the transactions that occurred between October 2017 and January 2018. (Findings of Fact ¶¶ 2-31 and 2-24 in the related Sidelines case)

15. M. Costanzo and S. Costanzo have both asserted that they were unaware of the circumstances that had taken hold at the Licensed Premises. This testimony is found not to be credible given the above. While there is no evidence that the Respondent was actively engaged in the sale of narcotics at the Licensed Premises, it is clear that the Respondent knowingly permitted the conduct that was alleged in this accusation and conduct beyond the allegations involving illicit narcotic activity.

PENALTY

The Department requested that the Respondent's license be revoked given the severity of the violations and the statutory requirement set forth in section 24200.5. The Respondent primarily argued that the evidence was insufficient to sustain the accusations. If the narcotics related counts were sustained, the Respondent argued for the court to consider the mitigating circumstances of the Respondent's efforts to avoid the conduct alleged.

Section 24200.5 provides that "the [D]epartment shall revoke a license" for any violation thereof. The Department has consistently construed this section as requiring some form of revocation although not necessarily outright revocation.[2] Outright revocation[3] or stayed revocation[4] can be appropriate depending upon the circumstances.

In the present case, outright revocation is warranted. The Respondent had an affirmative obligation to ensure that the Licensed Premises was operated in full compliance with the law. The Respondent did not. The illegal activity at issue here—repeated drug sale negotiations resulting in repeated sales of cocaine, MDMA methamphetamine, and MDA amphetamine to an undercover officer with the knowledge and permission of employees and a principal in the corporation clearly warrants revocation given the lax approach to management of the Licensed Premises evinced in this case. There is no indication that the Respondent took the appropriate steps to prevent such activity even after being put on repeated notice that there were severe problems with drug activity in the Licensed Premises.

The penalty recommended herein complies with rule 144.[5]

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[2] Cal. Code of Regs., tit. 4, §144.

[3] See, e.g., *Greenblatt v. Martin*, 177 Cal. App. 2d 738, 2 Cal. Rptr. 508 (1960) (outright revocation imposed for violations of section 24200.5).

[4] See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board*, 244 Cal. App. 2d 468, 36 Cal. Rptr. 697 (1964) (revocation stayed coupled with suspension imposed for violations of section 24200.5).

[5] All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

ORDER

The Respondent's on-sale general public premises license is hereby revoked.

Dated: November 2, 2018

Alberto Roldan
Administrative Law Judge

☐ Adopt

☐ Non-Adopt: _____

_____

By: _____

Date: _____

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

IN THE MATTER OF THE ACCUSATION AGAINST: COSTANZOS GENCO OLIVE OIL COMPANY, INC. TOBY AND JACKS 764 9TH STREET ARCATA, CA 95521-6206 ON-SALE GENERAL PUBLIC PREMISES - LICENSE under the Alcoholic Beverage Control Act.	File: 48-582810 Reg: 18086874 DECLARATION OF SERVICE BY MAIL

The undersigned declares:

I am employed at the Department of Alcoholic Beverage Control. I am over 18 years of age and not a party to this action. My business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. On November 13, 2018, I served, by regular mail (unless otherwise indicated) a true copy of the following documents:

PROPOSED DECISION

on each of the following, by placing them in an envelope(s) or package(s) addressed as follows:

COSTANZOS GENCO OLIVE OIL COMPANY, INC.
1838 STEPHANIE COURT
EUREKA, CA 95501-2781

PATRIK GRIEGO
ATTORNEY AT LAW
730 FIFTH STREET
EUREKA, CA 95501

COLLEEN VILLARREAL
3927 LENNANE DRIVE, SUITE 100
SACRAMENTO, CA 95834

JOE SCOLERI
ASSISTANT CHIEF COUNSEL
3927 LENNANE DRIVE, SUITE 100
SACRAMENTO, CA 95834

and placing said envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this department's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, County of Sacramento, State of California, in an envelope with the postage fully prepaid. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2018 at Sacramento, California.

Mark Kinyon

Mark Kinyon

X EUREKA DISTRICT OFFICE (INTEROFFICE MAIL)
___ DIVISION OFFICE (INTEROFFICE MAIL)