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Administrative Hearing Office
 Dept. of Alcoholic Beverage Control

7 Attorney for the Department of Alcoholic
 8 Beverage Control

9
 10 **BEFORE THE**
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
 11 **FOR THE STATE OF CALIFORNIA**

12
 13 **In the Matter of the Application of:**

14 **Il Boccaccio, Inc.**
 15 **DBA: Il Boccaccio**
 39 Pier Ave.
 16 **Hermosa Beach, CA**

} File#: 47-463116

} Reg#: 090-71531

} **Amended and**
 } **Amendment to**
 } **Statement of Issues**

17
 18 **Under the Alcoholic Beverage Control Act**

19
 20 To: ALJ Jonathan Logan and Richard D. Warren, Esq, attorney for the above
 21 captioned applicant, under Cal. Government Code Sec. 11507 and 11516, the
 22 Department herein amends and makes amendments to the Statement of Issues in this
 23 matter as follows,

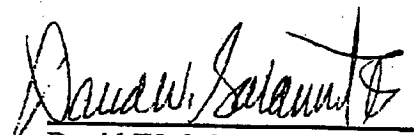
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 25 In addition to the original statement of issues, it is further alleged that the
 26 Department may add reasonable conditions as a pre-requisite to the person to
 27 person transfer of the license to the above applicant under,

ABC
 02-04-10

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- 1. Sec. 23800(a), in that there are grounds to deny such application due to a law enforcement problem currently existing in the immediate area of the applicant's premise at 39 Pier Avenue, Hermosa Beach, California, and
- 2. Sec. 23800(f), wherein the Department may place reasonable conditions upon a retail licensee at the time of a license transferred pursuant to Article 5(commencing with Section 24070) of Chapter 6, in that the transfer herein falls within such described class of transfers.

Dated: Feb. 4, 2010



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} **File#: 47-463116**

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} **Department's Post-
 Hearing Brief**

17 **Under the Alcoholic Beverage Control Act**

18
 19 To: ALJ Jonathan Logan and Richard D. Warren, Esq, attorney for the above
 20 captioned applicant, the Department presents its Post-Hearing brief for the above
 21 captioned application matter:
 22

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 24 **FEB 10 2010**
 25 **Administrative Hearing Office**
Dept. of Alcoholic Beverage Control

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Introduction

By way of a person-to-person transfer application, the applicant herein, Il Boccaccio, Inc. seeks to acquire the license now held by Carla and Joseph Venezia, co-licensees, for the above captioned premises. The license would remain at 39 Pier Ave.

As a part of the application process, ABC imposed and seeks to maintain two added conditions upon the license, as set forth in the Petition for Conditional License, executed by Cynthia Ibarra, on behalf of ABC, and dated Oct. 14, 2008.

The legal authority to impose such added conditions can be found under three distinct sections of the Bus. And Prof. Code, namely sec. 23800(a) and 23800(e) (1) and 23800(f). Based upon such each ground of authority combined with the facts presented at the hearing, there are sufficient grounds to maintain the new conditions upon the license as a pre-requisite of transferring the license to Il Boccaccio, Inc.

Authority to Impose Conditions Upon License

Bus. And Professions Code Sec. 23800 states, "The Department may

1 place reasonable conditions upon a retail license or upon any license in the
2 exercise of retail privileges in the following situations,

3
4 **23800(a)**

5 (a) If grounds exist for the denial of an application for a
6 license....and if the department finds that those grounds may be
7 removed by the imposition of those conditions.

8
9 In the matter at hand, it is clear this is an application because Il
10 Boccaccio is **applying** to the Department for its approval in transferring the
11 license from Joseph and Carla Venezia to Il Bocaccio, Inc., a separate and
12 distinct legal entity. From the evidence presented by Chief Savelli and backed up
13 by recent crime statistics, there was ample proof establishing a chronic law
14 enforcement problem exist on Pier Plaza, especially in the late night hours and
15 that Pier Plaza already has numerous active on sale- retail licensees there. As
16 such, there was sufficient grounds to "deny" this application. However, the
17 Department concluded that issuance of the license to Il Boccaccio with the two
18 added conditions would sufficiently address the law enforcement issue in that it
19 would not permit late night sales, service and consumption of alcoholic
20 beverages and help insure the premise remains a bona fide eating place.
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23 **Conditions Imposed Under 23800(e)(1)**

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25 The second ground under which the two conditions at issue herein can
26 be imposed is under authority of Section 23800(e) (1) which states,
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(e) (1) At the time of transfer of a license pursuant to Section 24071.1, 24071.2 or 24072 and upon notice to the licensee, the department may adopt conditions that the department determines are reasonable pursuant to its investigation or that are requested by the local governing body,in whose jurisdiction the license is located. The request for conditions shall be supported by substantial evidence that the problems either on the premise or in the immediate vicinity identified by the local governing body will be mitigated by the conditions. Upon receipt of the request for conditions, the department shall either adopt the conditions requested or notify the local governing body, or its designated subordinate officer or agency, in writing of its determination that there is not substantial evidence that the problem exists or that the conditions would not mitigate the problems identified. The Department may adopt conditions only when the request is filed. Any request for conditions from the local governing body or its designated subordinate officer or agency pursuant to this provision shall be filed with the department within the time authorized for a local law enforcement agency to file a protest or proposed conditions pursuant to Section 23987.

Under the above section, applicant seeks to transfer the license now held by the Venezias to itself, Il Bocaccio, Inc. The above sub-section applies to

1 transfers covered under 24071.1, 24071.2 and 24072. While this is neither a
2 transfer under 24071.1 nor 24071.2 it should be deemed a transfer under sec.
3 24072. While sec. 24072 generally focuses on fees due upon types of transfers,
4 the legislature did specifically refer to that section and the transfers described
5 therein as qualifying transfers subject to the imposition of conditions.
6

7 In *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 90 Cal.Rptr.2^d 260, 263,
8 987 P.2d 727, the California Supreme set forth a summary when faced with
9 analyzing a statute. It said,
10

11 When construing a statute, we must “ascertain the intent of the
12 Legislature so as to effectuate the purpose of the law. “(*DuBois v.*
13 *Workers’ Comp.Appeals Bd.* (1993) 5 Cal.4th 382, 387, 20 Cal.Rptr.2d
14 523, 853 P.2d 978.) The words of the statute are the starting point.
15 “Words used in a statute...should be given the meaning they bear in
16 ordinary use. [Citations] If the language is clear and unambiguous
17 there is no need for construction, nor is it necessary to resort to indicia
18 of the intent of the Legislature....” (*Lungren v. Deukmejian* (1988) 45
19 Cal.3d 727,735, 248 Cal.Rptr. 115,755 P.2d 299 (*Lungren*.) If the
20 language permits more than one reasonable interpretation, however,
21 the court looks “to a variety of extrinsic aids, including the ostensible
22 objects to be achieved, the evils to be remedies, the legislative history,
23 public policy, contemporaneous administrative construction, and the
24 statutory scheme of which the statute is a part.” (*People v. Woodhead*
25 (1987) 43 Cal.3d 1002, 1008, 239 Cal.Rptr. 656, 741 P.2d 154.) After
26 considering these extraneous aids, we “must select the construction
27 that comports most closely with the apparent intent of the Legislature,
with a view of promoting rather than defeating the general purpose of
the statute, and avoid an interpretation that would lead to absurd



1 consequences.” (People v. Jenkins (1995) 10 Cal.4th 234, 246, 40
2 Cal.Rptr.2d 903,893 P.2d 1224.)

3
4 As such, the inclusion of transfers for which fees are paid as described
5 in Sec. 24072 cannot be disregarded but must be read so as to give the 23800
6 statute meaning. As 27072 does describe fees due on person to person transfers,
7 it must be read such as to include that class of transfers, person to person
8 transfers, as being descriptive of the transfers referred to in Sec. 23800(e)(1).
9

10 In this case, the two new conditions sought to be imposed were
11 reasonable and appropriate. The local governing body, through its police
12 department provided the department with substantial evidence of a law
13 enforcement problem in the immediate area of the premises, that area known as
14 Pier Plaza. The police not only provided statistical back up with their
15 information, but such, taken in context with the testimony of the Chief Savelli,
16 provides ample grounds to impose the two added conditions so as to prevent
17 another late night alcoholic beverage retailer in Pier Plaza and to help insure that
18 the premises will remain a bona fide eating place.
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23 **Conditions Imposed Under Sec. 23800(f)**

24 Under 23800(f), the two added conditions may be imposed. That sub-
25 section simply says conditions can be imposed,
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(f) At the time of transfer of a license pursuant to Article 5
(commencing with Section 24070) of Chapter 6.

This subsection makes plain that the Department may impose reasonable conditions at the time of a transfer of a license commencing with Section 24070 Business and Professions Code. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature....” (Lungren v. Deukmejian (1988) 45 Cal.3d 727,735, 248 Cal.Rptr. 115,755 P.2d 299 (Lungren).)

Sec. 24070 et al describes that, with approval of the Department, licenses are transferable from one licensee to another person and from one premise to another premises. Sec. 24070.1 states that an on-sale license issued for a bona fide eating place may be transferred from the licensee to another person, as provided in Section 24070.... Thus, in this case, Ill Boccaccio is seeking just that kind of transfer. They seek the license to be transferred in a person to person transfer manner from the Venezias to Ill Boccaccio, Inc.

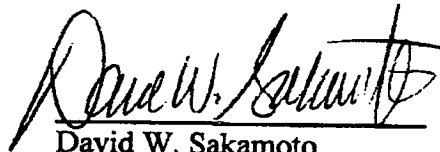
As such, 23800(f) permits the Department to impose reasonable conditions upon this retail licensee. In this instance, the two conditions sought to be added are reasonable. As noted earlier, the crime statistics put into context by the testimony from Chief Savelli indicate the clear presence of a chronic police problem on Pier Plaza, much of it is alcohol related and generally in the late night hours, after midnight. The two conditions will prevent the licensee from

1 retailing alcoholic beverages past midnight, thus preventing it from adding to
 2 the problem already present on Pier Plaza. The other condition requiring a
 3 majority of food sales over alcoholic beverage sales will help insure that the
 4 premise remains a bona fide eating place and not evolve into primarily a
 5 drinking establishment. If the applicant's intent is to remain a bona-fide eating
 6 place, there is no good reason why a majority of their sales should not come
 7 from food as opposed to sales of alcoholic beverages.

8
 9
 10 **Conclusion**

11 Based upon the above, there is ample legal authority and factual support
 12 to impose the two conditions at issue. As such, the Department recommends
 13 that the person to person transfer request be granted, contingent upon the two
 14 added conditions being imposed upon the license. If the two new conditions are
 15 not imposed, the transfer application should be denied.

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 18 Dated: Feb. 8, 2010



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