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Administrative Hearing Office
Department of Alcoholic Beverage Control

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

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

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

17 **Under the Alcoholic Beverage Control Act**

}
} **File#: 47-463116**
}
} **Reg#: 090-71531**
}
} **Department's**
} **Objections to Applicant's**
} **Brief and Declaration**

18
19 **To: ALJ Jonathan Logan and Richard D. Warren, Esq, attorney for the above**
20 **captioned applicant, the Department herein presents its objection to the applicant's**
21 **post hearing brief and the declaration submitted with that brief for the reasons stated**
22 **below.**

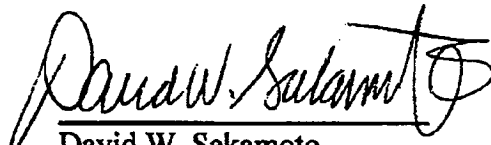
24 **Objection to Applicant's Brief**

25 **The Department objects to any portion of the licensee's brief that is,**
26 **cites to or refers to evidence or information not presented at the hearing before**
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ABC
3-04-10

1 the administrative law judge. The Proposed Decision ought to only be based
 2 upon the evidence adduced at the hearing and not supplemented by factual
 3 declarations by applicant or applicant's counsel. To permit such supplement of
 4 the record defeats the purpose of the evidentiary hearing and deprives the
 5 Department the right of cross-examination of the declarant. As such,
 6 Department objects to the entire declaration signed by licensee's counsel Rick
 7 Warren, Esq. and all portions of the brief which refer to extrinsic evidence, from
 8 whatever source, not presented and admitted at the hearing.
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12 Dated: March 4, 2010



David W. Sakamoto
 ABC Counsel III
 Department of Alcoholic
 Beverage Control

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9 Il Boccaccio Inc.

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

12 IN THE MATTER OF THE PETITION BY:

13 IL BOCCACCIO INC.
14 DbA Il Boccaccio Restaurant
15 39 Pier Avenue
16 Hermosa Beach, CA 90254

17 Petitioner

18 File No. 47-463116

19 Reg. No. 09071531

20 PETITIONER'S RESPONSE TO
21 DEPARTMENT'S OBJECTIONS TO
22 DECLARATION OF RICHARD D.
23 WARREN AND JUDICIAL NOTICE
24 REQUEST

25 TO HON. JONATHON LOGAN, ADMINISTRATIVE LAW JUDGE:

26 In its Closing Argument brief, Petitioner, Il Boccaccio Inc., offered evidence by way of
the declaration of Richard D. Warren. The Department has now objected to that evidence
being in the record, any reference to that evidence in the Petitioner's Brief and the entire
declaration of Mr. Warren.

Petitioner requests that Your Honor allow such evidence for the following reasons.

PETITIONER
304-10

1 It was only the last minute amendment at the hearing of the Statement of Issues by
2 the Department that completely shifted the Department's legal basis for its authority to
3 impose the Midnight Closing and 50-50 conditions on Petitioner. This tactic by the
4 Department prejudiced Petitioner because it came to argue against the applicability of
5 Section 23800(e), and the Department then asserted it could also act under 23800(a) and
6 23800(f).

7 This last minute change necessitated an examination of Section 23800 to interpret
8 subparagraphs (a), (e) and (f). The Declaration of Mr. Warren assists Your Honor by placing
9 the evolution of Section 23800(a), (e) and (f) in context, and by demonstrating that the
10 evidence submitted falls far short of the Department's own internal guidelines defining the
11 "substantial evidence" required.

12 Lastly, the Department strives for uniformity in the application of the laws it
13 administers. Exhibit K to Mr. Warren's Declaration is a true and correct copy of e-mails
14 exchanged with a Department Supervising Investigator on the exact core issue in this case;
15 namely, does Section 23800(e) apply to a person-to-person transfer. In that situation, the
16 Department said NO; section 23800(e) does not permit conditions to be imposed on a
17 person-to-person transfer. The e-mails identify the Department's file in that matter, the
18 name and contact information of the Department's Supervising Investigator and Mr.
19 Sakamoto can contact his client to confirm the accuracy of the facts stated in Mr. Warren's
20 declaration regarding that situation. The evidence is reliable, self-explanatory and readily
21 confirmable by the Department. It should be admitted in this matter unless Mr. Sakamoto
22 has some particular objection to its admissibility.

23 PETITIONER'S REQUEST TO TAKE JUDICIAL NOTICE OF EXHIBITS G, H, I, AND
24 J TO THE DECLARATION OF RICHARD D. WARREN

25 Government Code Section 11515 permits Your Honor to take official notice, before or
26 after submission of the case for decision, of any matter that may be judicially noticed by the
courts.


1 Evidence Code Section 451 states that judicial notice SHALL be taken of the public
2 statutory laws of the state. Exhibits G, H, I and J are officially published California statutes
3 including the Legislative Counsel's Digest.

4 "Since the Legislative Counsel is a state official (Gov. Code, § 10200), who is
5 required by law to "give such consideration to and service concerning any measure
6 before the Legislature as circumstances will permit, and which is in any way
7 requested by ... the Senate or Assembly, ..." (Gov. Code § 10234), it would seem by
8 analogy that it is reasonable to presume that the Legislature adopted section 139.7 of
9 the Civil Code with the intent and meaning expressed in his digest of the bill." *Maben*
10 *v. Superior Court*, 255 Cal App 2d 708, 713 (1967).

11 Evidence Code Section 452 identifies matters that MAY be judicially noticed, and
12 includes official acts of the executive departments, as well as facts that are not reasonably
13 subject to dispute and capable of immediate and accurate determination by resort to sources
14 of reasonably indisputable authority. Exhibit J to MR. Warren's declaration—the excerpt of
15 the Department's L Manual—meets these standards.

16 Dated: March 4, 2010

17 Respectfully submitted,

18 By 
19 Richard D. Warren

20 Attorney for Petitioner
21 Il Boccaccio Inc.
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