Supreme Court Case No. S185[illegible]

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

FAIEZ and CHRISTINA ENNABE, individually and behalf of the ESTATE OF ANDREW ENNABE

Plaintiffs and Appellants,

v.

CARLOS, MARY, AND JESSICA MANOSA

Defendants and Respondents.

Court of Appeal Case No.: B222784
Superior Court Case No.: KC053945

Review Sought of the Opinion of the
Court of Appeal, Second Appellate District, Division One
Case Number B222784
Affirming Summary Judgment of the
Superior Court of the State of California for the County of Los Angeles
Case Number KC053945
The Honorable Robert A. Dukes, Judge Presiding

PETITION FOR REVIEW

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I. INTRODUCTION

To the Honorable Chief Justice Cantil-Sakauye and the Honorable Associate Justices of the Supreme Court of the State of California:

Plaintiffs, Faiez and Christina Ennabe, individually and on behalf of the Estate of Andrew Ennabe ("plaintiffs") respectfully petition for review of the published opinion of *Ennabe v. Manosa* (2010) 190 Cal.App.4th 707, filed on December 1, 2010. As the *Ennabe* opinion states, this is a "***case of first impression***" which now requires the review of this Court to settle several issues of law affecting the limits of "social host" immunity, civil liability for alcohol-related accidents involving minors, the general safety of minors and all citizens of California from alcohol-related accidents and crimes caused by underage drinking. If the *Ennabe* opinion stands, the consequences of this decision will not only encourage alcohol intemperance amongst minors, but it will further endanger the safety of the citizens of this state by shielding those persons from civil liability not intended to be civilly immunized by the California Legislature.

II. STATEMENT OF ISSUES

Plaintiffs present the following issues:

1. Does a minor host lose the protections of civil immunity under Civil Code section 1714(c) reserved specifically for "social hosts," if that host arranges for a bouncer and charges a cover charge to all unknown and uninvited individuals who arrive at their property for alcohol already illegally purchased by them?
2. If the minor host is deemed to be a "social host," is that "person" still civilly liable under Business and Professions ("B&P") Code section 25602.1 either because that person was "required to be licensed" or "caused alcohol to be sold" when they arranged for a bouncer and charged a cover charge to all unknown and uninvited individuals who arrive at their property for alcohol already illegally purchased by them?

These two questions should be answered "yes!" Regrettably, the Court of Appeal answered these two questions in the negative, contrary to the stated intent of the California Legislature and the applicable laws of this state.

III. GROUNDS FOR REVIEW

As the Court of Appeal correctly stated in its decision, ***this is a "case of first impression."*** See *Ennabe v. Manosa* (2010) 190 Cal.App.4th 707 (emphasis added), attached hereto as Exhibit "A." The two issues presented by plaintiffs are important for defining the legal parameters of "social host" immunity, encouraging alcohol temperance, and maintaining the safety and protection of California citizens, especially minors, from alcohol-related accidents and crimes. Accordingly, the above issues should be resolved by this Court to address laws and policies passed by this state's legislature to protect the citizens of California, including minors, from the negative consequences of underage drinking.

As of 2008, motor vehicle accidents were the leading cause of death for 15 to 20 year olds with one-third being alcohol-related. (National Highway Safety Administration, *Young Drivers*, 2008, DOT 811 169.) In 2008, California was second in alcohol-related driving fatalities in the United States. (National Highway Safety Administration, *Traffic Safety Annual Assessment - Highlights*, 2008, DOT 811 172.) According to the California Office of Traffic Safety and the California Highway Patrol 28,463 people were injured and 1,355 were killed as a result of alcohol-related traffic accidents in 2008. (Statewide Integrated Traffic Records System, *Annual Report of Fatal and Injury Motor Vehicle Traffic Collsions*, 2008.)

There is also a growing body of research which suggests that alcohol consumption may increase criminal behavior, particularly among teenagers and young adults. Over 60 percent of incarcerated individuals surveyed by the Bureau of Justice Statistics admitted that they had been drinking before they committed a crime. (Bureau of Justice Statistics, *Alcohol and Crime: An Analysis of National Data on the Prevalence of Alcohol Involvement in Crime*, 1998, US Department of

Justice, NCJ-168632, April.) Moreover, millions of violent crimes are perpetrated each year by people whose victims report being certain that the perpetrator had been drinking alcohol. (*Id.*) A 2004 report by the Institute of Medicine notes that criminal activity constitutes the largest social cost of underage alcohol use ($29 billion annually), even greater than the social costs of motor vehicle accidents ($19 billion). (Bonnie, R., and M. O'Connell, eds., *Reducing Underage Drinking: A Collective Responsibility*, 2004, Washington, D.C.: The National Academies Press.)

Furthermore, underage alcohol-related accidents and crimes also cause a significant economic strain on the residents of California. In California, alcohol-related accidents and crimes cost state residents $38.4 billion annually or roughly $1,000.00 per resident or $3,000.00 per family each year. (Rosen, Simon and Simon, Michele, Alcoholism: Clinical and Experimental Research, *The Annual Catastrophe of Alcohol in California*, 2008.) That figure includes the costs associated with treatment of injuries, traffic and DUI expenses, and crime. (*Id.*)

Lost in these statistics is the amount of emotional damage caused to the victims, assailants, and their families who must cope with the unnecessary and preventable loss of life, limb, and liberty caused by underage alcohol-related accidents and crimes.

As a consequence, it is no surprise that the legislature intended to regulate purveyors of alcohol from providing, furnishing, and selling alcoholic beverages to underage individuals and sought to transfer the social, criminal, and economic costs to them in enacting and amending B&P Code section 25602.1. As it currently stands, the *Ennabe* opinion would thwart the legislative intent and statutory purpose of B&P Code section 25602.1 and the Alcohol Beverage Control Act ("ABC Act"). The *Ennabe* opinion shields persons who illegally provide alcohol to intoxicated minors where an indirect transaction for monetary consideration has taken place. Further, the *Ennabe* opinion eradicates the licensing requirements of B&P Code section 23399.1. For the foregoing reasons,

review by this Court is essential to define which "persons" are intended to have "social host" immunity and when immunity should give way for the safety of California's citizens, especially minors, as contemplated by the legislature under B&P Code section 25602.1.

IV. PROCEDURAL HISTORY

In July 2009, plaintiffs filed a First Amended Complaint against Defendants Carlos, Mary and Jessica Manosa ("defendants") for the death of their 19 year old son, Andrew Ennabe ("decedent"). [1AA 001-006.] Plaintiffs asserted three separate causes of action based on: 1) general negligence, 2) premises liability, and 3) B&P Code section 25602.1. [1AA 011-016.]

In September 2009, defendants answered the amended complaint and filed a motion for summary judgment or, in the alternative, a motion for summary adjudication on the basis that: 1) defendants did not owe a duty to plaintiffs to protect the decedent Andrew Ennabe from harm, 2) there is no causation between any acts or omissions of defendants and the death of the decedent, and 3) B&P Code section 25602.1 is inapplicable. [1AA 020, 025-050.] Despite the parties asserting numerous evidentiary objections, the trial court overruled every objection and granted defendants' motion for summary judgment in its entirety on January 12, 2010. [2AA 487-496.] Judgment was eventually entered by the trial court on February 19, 2010 and plaintiffs filed their Notice of Appeal on March 1, 2010. [2AA 497-501.]

Thereafter, the parties briefed their positions and following oral argument on November 15, 2010, the Court of Appeal filed its opinion on December 1, 2010, affirming summary judgment in favor of Defendant Jessica Manosa on the basis that she did not "sell" or "cause any alcoholic beverages to be sold" within the meaning of B&P Code section 25602.1. Moreover, the Court of Appeal held Defendant Jessica Manosa was not a "person required to be licensed" who may be held civilly liable under B&P Code section 25602.1.

Plaintiffs subsequently filed a Petition for Rehearing on December 10, 2010, which was denied on December 20, 2010. Consequently, plaintiffs have filed the instant Petition for Review.

V. STATEMENT OF FACTS

On the evening of April 27, 2007, Defendant Jessica Manosa ("defendant"), the then, 20 year old daughter of Defendants Carlos and Mary Manosa, hosted a house party open to the public at a vacant rental property owned, maintained and/or controlled by each of them in Diamond Bar, California. [1AA 014-016.]

Defendant, along with her friends, Cross-defendants Marcello Aquino and Mario Aparicio ("cross-defendants"), invited mutual friends to her party. [2AA 331:22-332:1, 344:2-14, 371:11-372:24, 373:13-25, 377.] Despite defendant's claim that she invited only a few close friends (allegedly fewer than 15), the party attracted approximately 60 people. [2AA 331:22-332:1, 344:2-14, 371:11-372:24, 377.] The vast majority of the people who attended the party were under the age of 21, and approximately one-third of those in attendance were unknown and uninvited by defendant or her friends. [2AA 312:22-25, 332:10-17.] In fact, defendant, both cross-defendants, and Andrew Ennabe, the decedent, were all under the age of 21 at the time of the incident. [1AA 056, 2AA 295:9-10, 320:22-24]

Unknown and uninvited individuals who arrived at the property were charged a $3 to $5 cover charge to enter the party and drink alcohol already purchased by defendant. [2AA 332:22-333:12, 334:17-335:16, 343:2-6, 350:17-22, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] Specifically, defendant directed a friend of Cross-defendant Aquino, Todd Brown, to serve as a "bouncer" and charge unfamiliar individuals as they approached the premises. [2AA 332:22-333:12, 334:17-335:16, 343:2-6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] Payment of the fee allowed partygoers admission onto defendants' property, an

opportunity to enjoy music played by a professional disc jockey ("DJ") and most importantly, unfettered access to alcohol contained on the property purchased by defendant. [2AA 332:22-333:12, 334:17-335:16, 343:2-6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] Friends known to defendant were given free admission into the party.

Central to defendant's party was the presentation and consumption of alcohol. [2AA 310:18-311:10] The alcohol, several cases of beer, at least three to four bottles of tequila and rum, a large cooler of "jungle juice,"[1] cups, and juice were provided at the party without limitation by defendant to partygoers. [1AA 139 and 2AA 308:5-310:17, 311:11-17, 312, 315:9-316:11, 318:13-15, 380-382.] ***No other alcohol was brought onto the premises by any partygoers in attendance***. [2AA 318:13-15.] Defendant testified that she purchased the alcohol at the party by contributing approximately $60.00 towards the illegal purchase of alcohol for the party. [1AA 139 and 2AA 295:9-10, 308:5-310:17, 312, 313:9-24, 315:9-316:11, 318:13-15.] ***Both cross-defendants denied purchasing or supplying any alcohol for defendant's party*** during their respective depositions. [2AA 350:9-22, 373:2-8.] In the end, defendant clearly understood that she was the host of the party and it was entirely "her own idea." [2AA 303:17-19, 321:5-7, 370:10-16.]

Some time during the party, David Ennabe, the younger brother of the decedent, personally observed and heard defendant tell Cross-defendant Aparicio and Stephen Filaos, another invited partygoer, to purchase additional alcohol for the party and to obtain ***some*** funds for the additional alcohol from the cover charge fees collected by Brown at the side gate of the house. [2AA 402-404.] Despite defendant not recalling at her deposition whether an additional alcohol run was made during the party, Hani Abuershaid, the brother of defendant's boyfriend, specifically heard Stephen Filaos say to Brown and Cross-defendant Aquino that,

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[1] "Jungle juice" is a mixture of various forms of hard alcohol and fruit juice.

"Jessica told me to get money from you to get more alcohol." [2AA 345:1-7, 346:5-347:6.] Moreover, Abuershaid stated he saw Filaos take ***some*** money from Brown for the purpose of purchasing additional alcohol for the party and leave with Cross-defendant Aparicio for the store. [2AA 345:1-7, 346:5-347:6.] Approximately 30 minutes later David Ennabe observed the additional alcohol being brought onto the premises by Cross-defendant Aparicio and Filaos. [2AA 402-404.]

During the course of the party two specific underage individuals, Thomas Garcia and the decedent, arrived obviously intoxicated but were nonetheless admitted onto the premises and provided with additional alcohol supplied by defendant. [1AA 056, 139 and 2AA 308:5-309:12, 312-313:3, 313:9-24, 315:9-316:11, 317:2-17, 318:13-15, 320:9-24, 336:2-338:14, 340:10-15, 357:15-24, 358:5-21, 359:1-19, 360:9-25, 364:19-22, 380-382, 387, 389-391, 402-404.] Garcia was an unknown and uninvited individual admitted onto the property and given unlimited access to alcohol only after paying the requisite cover charge to defendant's bouncer. [2AA 318:13-15, 336:2-9, 362:19-363:4, 387.] Garcia admitted during his deposition that he paid a cover charge for him and his friends to enter the party and drink defendant's alcohol. [2AA 336:2-9, 362:19-363:4, 387.] Upon his arrival, Garcia appeared to be clearly intoxicated and belligerent to several witnesses based upon his appearance and actions. Witnesses Abuershaid, Mike Bosley, a childhood acquaintance of Garcia, David Ennabe and cross-defendants observed Garcia display behavior that led them to believe that Garcia was already intoxicated from either consuming alcohol and/or smoking marijuana. According to these eyewitnesses, Garcia had slurred speech, impaired faculties, poor muscular coordination, and acted in a rowdy and belligerent manner. [2AA 336:2-338:14, 389-391, 402-404, 415-421.] Additionally, Garcia admitted during his deposition that he had consumed what he believed to be approximately four shots of whiskey prior to his arrival at defendant's party. [2AA 358:5-21, 359:1-19, 360:9-25, 364:19-22.] With regard to decedent (an

invited guest), it was known to defendant, Bosley and David Ennabe that he arrived at defendant's party from another party where he had already become intoxicated from drinking alcohol. [2AA 320:9-321:1, 389-391, 402-404.]

While on the premises, decedent and Garcia consumed additional amounts of alcohol provided by defendant. David Ennabe observed decedent drink alcohol supplied by the defendant during the party. [2AA 320:9-321:1, 389-391, 402-404.] With regard to Garcia, Abuershaid observed him drink what appeared to be a beer taken from defendants' refrigerator. [2AA 330:12-24, 340:10-15, 341:1-18.] Bosley, who was also an uninvited partygoer, spoke to Garcia during the party and saw him drink tequila and mixed alcoholic drinks supplied at the party. [2AA 389-391.] This additional alcohol caused Garcia to become overly belligerent with others partygoers. In fact, Garcia was so intoxicated that he was seen dropping his pants several times while dancing, soliciting sex and aggressively "hitting on" females at the party. [2AA 340:10-25, 341:21-342:11, 415-421.] As a result of his inappropriate behavior and increased intoxication, Garcia was asked to leave the party and was escorted off the premises to his vehicle. Once in his vehicle, Garcia drove away and struck decedent who was near the front portion of defendants' property.[2] Decedent's own alcohol consumption caused his faculties, including his judgment, perception, coordination, balance and reflexes to become significantly impaired. [2AA 415-421.] As such, decedent was unable to perceive and avoid the oncoming vehicle being driven by Garcia who was also under the influence of alcohol. [2AA 320:9-321:1, 330:12-24, 340:10-15, 341:1-18, 340:10-25, 341:21-342:11, 389-391, 402-404, 415-421.] As a result of this incident, decedent sustained fatal injuries and died approximately one week later.

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[2] Garcia stated during his criminal sentencing hearing that "it was not [his] intention to hit [the Ennabe's] son..." and that he "really had no recollection of what happened that night." [2AA 432-434, 415-421.]

V. ARGUMENT

A. DEFENDANT WAS NOT A "SOCIAL HOST" WITHIN THE MEANING OF CIVIL CODE SECTION 1714(c) ON THE EVENING OF THE INCIDENT WHEN SHE ARRANGED FOR A BOUNCER TO CHARGE UNKNOWN AND UNINVITED INDIVIDUALS A COVER CHARGE FOR ALCOHOL SHE ALREADY PURCHASED.

Civil Code section 1714(c) specifically provides, "No ***social host*** who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages." (Civ. Code § 1714, subd. (c) (emphasis added).)

Civil Code section 1714(c) specifically immunizes social hosts from civil liability without defining the terms "social host." Based on a plain reading of the statute, the legislature obviously intended that "social hosts" be the only class of individuals civilly protected from liability under the law.

In determining the meaning of "social host" the individual terms must be interpreted on their own and in conjunction with one another. According to Merriam-Webster's Dictionary, the term "social" is "marked by or passed in pleasant companionship with ***one's friends or associates***." (See www.merriam-webster.com (emphasis added).) Moreover, something that is "social" relates to "human society, the interaction of the individual and the group, or the welfare of human beings as members of society." (*Id.*) A "host" is defined as one that "receives or entertains guests socially, commercially or officially." "Host" also means "one that provides facilities for an event or function." (*Id.*) "Commercial" is defined as "occupied with or engaged in commerce or work intended for commerce" or "viewed with regard to profit." (*Id.*)

Taking into consideration the terms "social host," it can only be interpreted that the legislature intended to protect solely those "hosts" who "receive or entertain friends and associates for pleasant companionship." Consequently, it can safely be inferred that commercial hosts, those who "provide facilities for an event

or function" while "occupied or engaged in commerce" or acting "with a regard to profit," would be left unprotected by Civil Code section 1714(c).

Based on the plain meaning of "social host," defendant was not a "social host" within the meaning Civil Code section 1714(c) under the disputed facts. Generally speaking, a "social" host would not arrange for a bouncer, open their property to individuals ***unknown to them*** (i.e. people who are not friends or associates), and then allow them to remain on the property. More importantly, a "social" host who only seeks "pleasant companionship" would not ***require*** those same unknown people to ***pay a cover charge*** to enter their property and consume their goods, in this case ***alcohol defendant already purchased***, unless they were "engaged in commerce" or "with a regard to profit." Here, defendant opened the subject property to unknown and uninvited individuals and caused alcoholic beverages to be sold to them through a bouncer who charged a cover charge she required for her gain. [2AA 332:22-333:12, 334:17-335:16, 343:4-6, 345:1-7, 346:13-347:6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] One thing that is evident is that the legislature believed "***the act of selling alcohol to obviously intoxicated minors for commercial gain should be sufficient basis for imposing liability***." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1053 (1985-1986 Reg. Sess.) (emphasis added).)

1. Defendant Did Not "Pool" Money with Others to Create a "Common Fund" to Purchase Alcohol.

The Court of Appeal illogically reaches the conclusion that the defendant in the instant matter was a "social host" on the evening of the subject incident by comparing this case to *Bennett v. Letterly* (1977) 74 Cal.App.3d 901, a case it incorrectly characterized as the "only other case in California addressing the issue of liability of a minor host where money is pooled to purchase alcoholic beverages for a party." The *Ennabe* court ultimately reached the conclusion that defendant was a "social host" because it felt the instant matter was a situation where money

was "pooled" into a "common fund" by a close group of friends who decided to purchase alcohol for their own social consumption. In *Bennett*, Defendant Letterly, a high school student and a member of its varsity basketball team invited a small group of his classmates (a total of five people) to his home which included John Howell, Carlos "Charlie" Baca, Steve Alvarez and Wayne Houchins and his date. Although the defendant had been instructed to stay at home by his parents, who were away for the holidays, defendant told his classmates that they were welcome to come to his house following a junior varsity basketball game later that evening. Howell and Baca arrived at defendant's home in a car belonging to Howell's parents and driven by Howell. After a short time had elapsed, ***the close group of classmates decided that they should attempt to procure some alcoholic beverages***. Though it is unclear exactly how many of those present contributed money toward the purchase of the alcohol, and how much was ultimately collected, it is clear that defendant contributed somewhere between $2 and $5 and that Howell contributed $5. Thereafter, Howell, Alvarez and Baca left defendant's home for the purpose of purchasing the desired alcohol. During the course of their trip the trio were able to procure alcohol and proceeded to consume an entire bottle of whiskey. Unfortunately, while returning to defendant's home, Howell lost control of the car and the car struck plaintiff, causing him personal injury.

Ultimately, the *Bennett* court affirmed the decision granting summary judgment in favor of defendant, purchaser of alcohol. The court held that defendant's conduct did not constitute furnishing an alcoholic beverage to a minor in violation of Cal. Bus. & Prof. Code § 25658(a) which makes it a misdemeanor for anyone who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years. (*Bennett v. Letterly* (1977) 74 Cal.App.3d 901, 905.) The court reasoned that "the word 'furnish' implies some type of affirmative action on the part of the furnisher..." (*Id.*) The Court concluded that defendant did no more than contribute $2 to $5 to a common fund intended to be used for the purchase of liquor. He did not himself

purchase the liquor. There is no evidence that, once the alcohol was purchased and brought back to defendant's house, he exercised any control over, or even handled, the bottle of whiskey Howell and Baca consumed. All the evidence indicates that Howell and Baca consumed the entire bottle of whiskey, pouring and mixing their own drinks and serving themselves. (*Id.*)

Unlike *Bennett*, the record clearly indicates that defendant's two friends (Cross-defendants Aparicio and Aquino) denied ever contributing any money or purchasing any alcohol for defendant or her party. [2AA 350:9-22, 373:2-8.] Moreover, defendant herself admits no other alcohol was brought onto the premises by anyone else contrary to the Court's opinion. [2AA 318:13-15.] In fact, Cross-defendant Aquino stated the alcohol was present when he first arrived at defendant's party. [2AA 350:20-22.] Therefore, if defendant's two other friends did not contribute any money towards the purchase of alcohol and no other alcohol was brought onto premises it would logically flow that defendant was the sole source of alcohol on the day of the incident and did not "pool" any money with her close friends.

Moreover, unlike the *Bennett* participants, defendant and the unknown and uninvited individuals admitted onto the property ***never decided*** to enter into a mutual arrangement where money would be "pooled" into a "common fund" to purchase alcohol. As the facts clearly show, when unknown and uninvited individuals approached the door they were greeted by defendant's bouncer who advised them that they may gain entry and drink alcohol already at the party if they paid a cover charge to him for defendant. [2AA 332:22-333:12, 334:17-335:16, 343:2-6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] The cover charge was not discretionary (i.e. a donation) but mandatory for the right to enter defendant's premises and drink the alcohol defendant had ***already*** purchased.

Contrary to the reasoning in the *Ennabe* opinion, there is no evidence that the unknown and uninvited individuals were ever aware that ***some*** of the money

from the cover charges collected by defendant's bouncer was used to purchase additional alcohol later in the evening. Given that defendant did not know or communicate with these unknown individuals, including Garcia, it would be impossible for defendant and individuals like Garcia to decide to enter into a mutual arrangement (i.e. a common fund) such as the one described in the *Ennabe* court's opinion unless there was some prior understanding that the money would be used for the purchase of additional alcohol. Regrettably, the *Ennabe* court somehow made an illogical leap that when a close group of five classmates get together and mutually decide to pool money for the purchase of alcohol for their own social consumption, such as the case is in *Bennett,* that is the same as one person, defendant, requiring approximately ***20 strangers*** pay a cover charge to drink alcohol already purchased. On the very face of these facts the *Bennett* case is distinguishable and inapplicable to the instant matter.

Even if this Court were to conclude that the instant matter is a "pooling" case, civil liability has been established where a minor host has created a "common fund" for the purchase of alcohol. The more recent and applicable case of *Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, referenced and cited in Appellants' Opening Brief supports the position that civil liability may be imposed on a minor host where money is "pooled" to purchase alcoholic beverages for a party. In *Sagadin*, a driver and passenger of a motor vehicle filed a civil action based on a violation of B&P Code section 25658 for damages arising from a single vehicle accident against a minor host and his parents, the homeowners. In that case, the minor host held a party with 65 people in attendance at his parents' house where ***the minor contributed money to a common fund*** for the purchase two half kegs of beer ***prior to and during the course of his party*** to be poured from his father's home beer dispenser. (*Id.* at 1157-1158.) Ultimately, the court concluded ***the minor host and his father, who was not present during the party, "furnished" alcohol to minors and were civilly liable*** based upon their affirmative actions. In reaching its conclusion, the court held that ***a host need not***

pour any alcoholic drinks to have "furnished" alcohol if that person has taken some affirmative step to supply it to the drinker. (*Id.* at 1158.) Ultimately, one has "furnished" alcohol once they tacitly authorize the disposition of alcohol and provide the means by which alcohol was supplied to minors. (*Id.*)

Like the minor host and father in *Sagadin*, the defendant in the instant matter exercised sufficient control over the alcohol she purchased for a court to have determined that she "furnished" and "sold" alcohol to the people at her party. Here, the disputed facts reveal that the defendant exclusively purchased the alcohol, provided the means for consumption (i.e. provided cups, ice, and juice) and arranged for a bouncer to regulate and charge ***anyone,*** not "guests," who was willing to pay her cover charge for her alcohol. [1AA 139 and 2AA 308:5-310:17, 311:11-17, 312, 315:9-316:11, 318:13-15, 332:22-333:12, 334:17-335:16, 343:2-6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 380-382, 387, 389-391, 402-404.] The fact that admitted partygoers such as Garcia served themselves alcohol is insignificant because defendant took substantial steps to make the alcohol available to anyone she knew or anyone willing to pay for it.

It is unclear based on the *Ennabe* opinion why the *Bennett* case would be more authoritative than the *Sagadin* case when the facts of *Sagadin* are more analogous to the instant matter. Based on a plain reading of the *Ennabe* court's opinion, it appears the facts and holding of the *Sagadin* case were wholly overlooked despite its obvious applicability to the instant matter. Additionally, it is unclear why the *Ennabe* court would rely on a case entirely interpreting the meaning of "furnish" (i.e. *Bennett*) to reach the conclusion that defendant was a "social host" and not consider another case involving the same exact legal issues (i.e. *Sagadin*) and factual scenario as the one involved in the instant matter which reach a different conclusion.

B. THE LOWER COURTS FAILED TO CONSIDER THE LEGISLATURE'S INTENT TO EXTEND LIABILITY TO "PERSONS" SUCH AS THE DEFENDANT IN THE INSTANT MATTER IN RESPONSE TO THE *CORY v. SHIERLOH* DECISION WHEN ANALYZING B&P CODE SECTION 25602.1.

B&P Code section 23000 et seq., also known as the ABC Act, governs the manufacture, sale, and disposition of alcoholic beverages within the State of California. (Bus. & Prof. Code § 23000 et seq.) Pursuant to B&P Code section 23001, the ABC Act is intended to be an exercise of the police powers of the State for the ***protection of the safety, welfare, health, peace, and morals of the people of the State, to eliminate the evils of unlicensed and unlawful manufacture, selling, and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages***. (Bus. & Prof. Code § 23001 (emphasis added).) The primary purpose of this Act requires the highest degree of economic, social, and moral well-being and safety of the State and all its people. (Bus. & Prof. Code § 23001.) When analyzing the ABC Act, ***all provisions*** of the ABC Act ***must be liberally construed*** for the accomplishment of these purposes. (Bus. & Prof. Code § 23001 (emphasis added).) Presumably, this would include B&P Code section 25602.1.

In 1978 the California Legislature enacted law which generally provides civil immunity to "social hosts" who provide alcoholic beverages to third parties who subsequently become injured or injure others as a result of their alcohol consumption.[3] (See Civ. Code § 1714, subd. (c) and Bus. & Prof. Code § 25602, subd. (b).)

At the same time, the legislature carved out an exception to this general shield of liability by enacting B&P Code section 25602.1. This section provides for a separate "Cause of Action" when "Alcoholic Beverages are Supplied to an

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[3] In 1978 the Legislature amended Civil Code section 1714 and B&P Code section 25602 to add subdivisions (b) and (c) to each respective section creating what is currently known as "social host" immunity in California.

Intoxicated Minor."[4] The rationale for this exception is that the legislature considered minors more in need of safeguarding from intoxication than adults, because of the comparative inexperience in both drinking and driving. (*Chalup v. Aspen Mine Co.* (1985) 175 Cal.App.3d 973, 979.)

Between 1978 and 1986, civil liability under B&P Code section 25602.1 was limited to licensed suppliers of alcohol. This section previously provided:

> Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed pursuant to Section 23300 who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage to any obviously intoxicated minor where the furnishing, sale or giving of such beverage to the minor is the proximate cause of the personal injury or death sustained by such person.

It was not until January 1, 1987, with the enactment of Senate Bill No. 1035 (Stats. 1986, ch. 289), that civil liability under B&P Code section 25602.1 was expanded to circumstances where physical injuries resulted from the supplying of alcohol by ***unlicensed*** "persons." (See Bus. & Prof. Code § 25602.1; *Baker v. Sudo* (1987) 194 Cal.App.3rd 936, 943 (emphasis added).) Currently, B&P Code section 25602.1 provides:

> Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against ***any person*** licensed, ***or required to be licensed***, pursuant to Section 23300, or ***any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave***, who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and ***any other person who sells, or causes to be sold***, any alcoholic beverage, to any obviously intoxicated minor where

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[4] The use of the term "minor" under the B&P Code refers to persons under the age of 21. (*Rogers v. Alvas* (1984) 160 Cal.App.3d 997, 1004.)

> the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.[5] (Bus. & Prof. Code § 25602.1 (emphasis added).)

In interpreting the 1987 amendment, the Court in *Baker v. Sudo* 194 Cal.App.3rd 936, noted that "Senate Bill No. 1053 did not clarify existing law in the area of liability for providers of liquor; ***it changed the law***." (*Id.* at 944 (emphasis added).) More importantly, the Court concluded that the purpose of the amendment was to impose civil liability on ***any person*** who sells any alcoholic beverage to an intoxicated minor where the sale proximately caused death or injury. (*Id.* (emphasis added).) Coincidentally, the Senate Committee's report on Senate Bill No. 1053, under the heading of "Purpose" provides:

> Existing law generally immunizes a provider of alcohol from liability for any injury caused by the consumer of the alcohol. However, it specifically holds a liquor licensee civilly liable for any injury or death proximately caused by the licensee's sale or furnishing of alcohol to an obviously intoxicated minor. The liability provision has been interpreted by the Ninth Circuit Court of Appeals to be inapplicable to a nonlicensed club on a United States military base which sells alcohol to an obviously intoxicated minor. [*Gallea v. United States* (1986) 779 F.2d 1403.]
>
> This bill would revise the liability provision to ***impose civil liability upon any person who sells or causes to be sold any alcoholic beverage to an intoxicated minor*** where the sale proximately causes a death or

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[5] The italicized clauses were specifically added by the legislature in 1987 to address the decisions of *Cory v. Shierloh* (1981) 29 Cal.3d 430 and *Gallea v. United States* (1986) 779 F.2d 1403. The legislature expanded liability under B&P Code section 25602.1 in 1987 to include three classes of "persons" subject to liability. These three classes include: (1) "any persons required to be licensed," or (2) "any persons authorized by the federal government to sell alcohol," and (3) "any other person who sells" or cause alcohol to be sold. (See Bus. & Prof. Code § 25602.1.)

> injury. It would also impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by nonlicensed liquor sellers required to be licensed.
>
> 'The ***purpose of this bill is to close gaps in the law*** which impose civil liability for selling alcohol to obviously intoxicated minors.' [*Gallea v. United States* (1986) 779 F.2d 1403.]
>
> The Senate committee report also notes judicial criticism of the law because it pinned liability on the license status of the liquor seller and quoted the *Cory*, supra, 29 Cal.3d 430, court on the subject.
>
> Additionally, under the Comments section, the Senate committee report observes: 'Imposing civil liability for any sale of alcohol to an obviously intoxicated minor ***would nullify the Cory*** (in part) ***and Gallea decisions***. The bill would not, however, affect the existing immunity for social hosts as it would not impose any liability for the free furnishing of alcohol.'" (*Baker v. Sudo* (1987) 194 Cal.App.3rd 936, 944, Footnote No. 10 (emphasis added).)

In *Baker v. Sudo*, an injured motor vehicle passenger brought a civil action arising from a single-vehicle accident occurring on June 30, 1984 against the residents and owners of a residential property. In that case, guests were charged an admission fee where they listened to music being performed by live band and were provided with unregulated amounts of beer and hard liquor. The trial court granted summary judgment for defendants based on the immunities provided by Civil Code section 1714(c) and B&P Code section 25602(b). The Court of Appeal affirmed the lower court's decision holding that the passenger's cause of action failed under B&P Code section 25602.1 ***as it stood at the time of the accident***, since liquor licensees were not involved in the case when the injury accrued. (*Id.* at 942-944 (emphasis added).) Additionally, the Court held that the 1987 amendment broadening the exception to unlicensed suppliers of alcohol ***after the***

time of the accident did not apply retroactively to the defendants in that case. (*Id.* (emphasis added).)

More importantly, *Baker* pointed out that it was the legislature's intent in passing Senate Bill No. 1035 to nullify the decisions rendered in *Cory* and *Gallea* as they relate to the licensing status of the alcohol supplying "person." The legislature's intent is clearly reflected in the change of the statutory language of B&P Code section 25602.1 as it read in 1978 to the current version amended version in 1987. A simple reading of B&P Code section 25602.1 reveals the addition of three specific clauses: 1) **"any person...required to be licensed,"** 2) **"any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave,"** and 3) **"any other person who sells, or causes to be sold...any alcoholic beverage"** All three clauses were added to specifically address the legislature's intent to nullify the decisions of *Cory* and *Gallea* based upon their specific facts.

In *Cory v. Shierloh*, a minor became intoxicated at a ***private party where an admission fee was allegedly charged by the minor host.***[6] Ultimately, the plaintiff was injured when he left the party and lost control of his vehicle. (See *Cory v. Shierloh* (1981) 29 Cal.3d 430, 437.) The trial court sustained the host's demurrer based on B&P Code section 25602(b), and Civil Code section 1714(c), barred plaintiff's action. The Court of Appeal and the Supreme Court affirmed the trial court's decision with reservation concluding that the defendant was not licensed to sell alcohol as required to find liability under the pre-1987 amended version of B&P Code section 25602.1. In reaching that decision, the Supreme Court in *Cory* foreshadowed and likely facilitated the passage of the 1987 amendment to B&P Code section 25602.1 when it stated:

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[6] It is important to note that the Supreme Court stated that, "Our interpretation of this section makes it unnecessary for us to decide whether defendants, who allegedly charged an entrance fee to the party in question, fairly may be deemed "social hosts" who are also shielded from liability by Civil Code section 1714(c)." (*Cory v. Shierloh* (1981) 29 Cal.3d 430, 437.)

> We are not unmindful of the fact that the 1978 amendments constitute a patchwork of apparent inconsistencies and anomalies. Thus a licensed seller of liquor is liable to anyone injured by an obviously intoxicated minor served by the seller, while a nonlicensed, presumably illegal seller is not so liable... Causation in a common law sense, whether actual or physical, proximate or legal, has never pivoted on such a perilous and seemingly irrelevant fulcrum. Nonetheless, our function is to find, if possible, some means to sustain, not reject, those amendments. (*Id.* at 440.)

Similarly, in *Gallea v. United States,* the parents of a girl killed in a motorcycle accident, after a minor driver had been served alcoholic drinks at a naval base, brought a wrongful death action against the United States under the Federal Tort Claims Act ("FTCA"). The district court dismissed the United States from the action, and the parents challenged the judgment. The Court of Appeals affirmed, holding that the United States was not civilly liable because the naval base was not a licensed provider of alcohol under state law. The Court of Appeals also held that at the time of the decedent's death the state legislature intended the immunity exception to be limited to liquor suppliers licensed under state law. (*Gallea v. United States* (1986) 779 F.2d 1403, 1404-1406.)

In sum, it can only be interpreted that the legislature in 1986 intended to amend B&P Code section 25602.1 to address the prior illogical judicial decisions of *Cory* and *Gallea* which rested on a person's licensing status rather that their tortious conduct. Based on plain language of B&P Code section 25602.1 and its expressed legislative intent to abrogate the holdings of *Cory* and *Gallea,* it is clear that the legislature intended to have this statutory exception apply to situations where unlicensed "persons" who were "required to be licensed" furnish or cause to sell alcohol to intoxicated minors similar to that of *Cory* and *Gallea.* This is evidenced by legislature's stated intent to nullify the decisions in *Cory* and *Gallea* and the inclusion of the three clauses specifically added to address the facts of

each respective case. Specifically, the clause "**any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave**," was added to the B&P Code section 25602.1 to address the facts of *Gallea* because a sale of alcohol took place on a military base by a person authorized by the federal government to sell alcohol. Similarly, by amending B&P Code section 25602.1 to include the clauses **"any person...required to be licensed"** or **"any other person who sells, or causes to be sold...any alcoholic beverage"** the legislature specifically intended to have B&P Code section 25602.1 apply to persons who charge an fee for access to alcohol without a liquor license which otherwise would require one because a sale for an alcoholic beverage has occurred. If that were not the case, the inclusion of the amended language would not be necessary unless the legislature felt the charging of an admission fee for access to alcohol either required a license or was a "sale" of alcohol. In sum, it is plaintiffs' position that the facts of the instant matter are similar to that of *Cory* and that defendant is a "person" "required to be licensed" or a person who "sold" or "caused alcohol to be sold" to an obviously intoxicated minor subject to liability under B&P Code section 25602.1.

1. Defendant is a "Person" Covered Under the B&P Code Section 25602.1.

Under B&P Code section 25602.1 a civil cause of action may be brought against "any person" who gives, furnishes, or sells alcohol to an obviously intoxicated minor where the sale proximately causes injury. (See Bus. & Prof. Code § 25602.1.) B&P Code section 23008 defines "person" to include "***any individual***, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number." (Bus. & Prof. Code § 23008 (emphasis added).)

B&P Code section 23008 defines "person" to include "individuals." (Bus. & Prof. Code § 23008.) If the Code was intended to limit liability to only those

"persons" in the general business of selling alcohol, such as bars, taverns, clubs or liquor stores, the legislature would have made that clear by specifically limiting the definition of "persons" to those types of enterprises and excluding the term "individual" from its definition. Instead, the legislature fully intended to have "persons" defined liberally to include "individuals" such as the defendant.

2. Defendant was "Required to Have a License."

Under the ABC Act, "No license or permit shall be required for the serving and otherwise disposing of alcoholic beverages where ***all*** of the following conditions prevail:

1. That there is ***no sale*** of an alcoholic beverage.

2. That the ***premises are not open to the general public*** during the time alcoholic beverages are served, consumed or otherwise disposed of.

3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages. (See Bus. & Prof. Code § 23399.1 (emphasis added).)

Obviously, plaintiffs concede the third condition is not met because the party took place at a residential property. However, plaintiffs are of the position that a "sale" occurred (See the below section for further discussion) ***or*** the "premises were open to the general public during the time alcohol was served, consumed or otherwise disposed of."

Here, the *Ennabe* court in its opinion glanced over the second element of B&P section 23399.1, presuming defendant's party was not open to the general public because as stated in the court's opinion "only those to whom the party was publicized" were admitted onto the premises. The Court takes the position that if ***anyone*** becomes aware of an event on private property that the person becomes a "guest" of the host by virtue of their mere knowledge of the event. This position clearly creates illogical precedent. The *Ennabe* court presumes that anyone walking by defendant's property or hearing about her party from any third-party becomes a "guest" of defendant by virtue of their knowledge of the party. Such a

conclusion is illogical and establishes poor legal precedent for all cases involving land possessors and occupiers and their respective duty to those on their property. Moreover, Garcia and his cohorts were ***unknown and uninvited*** by the defendant. Defendant clearly admits she did not know Garcia or his friends nor did she invite them to the party. [2AA 318:13-15, 336:2-9, 362:19-363:4, 387.] If she did not know Garcia and his friends and she did not invite them then they are clearly strangers and members of the general public. This is especially true if these same strangers are required pay to gain access to the property and the alcohol contained therein. Additionally, the record does not indicate that any of defendant's friends knew or invited Garcia or his friends to the party. In sum, defendant was "required to be licensed" on the day of her party because the premises were open to the general public while alcohol was being consumed.

3. Defendant "Caused Alcohol to be Sold."

Additionally, defendant would be liable under either "any person... required to licensed" clause or the "any other person who sells, or causes to be sold...any alcoholic beverage" clause because she "caused alcohol to be sold" on the evening of the incident.

B&P Code section 23025 defines "sell," "sale," and "to sell" to include "***any transaction*** whereby, ***for any consideration***, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving an order for such beverages." (Bus. & Prof. Code § 23025 (emphasis added).) B&P Code section 25604 further defines "consideration" to include "a ***cover charge***, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or ***the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks***." (Bus. & Prof. Code § 25604 (emphasis added).)

The California Department of Alcohol Beverage Control, the enforcement arm for the ABC Act, recently published a *Trade Enforcement Information Guide*

in November 2009 ("TEIG") to serve as a reference and enforcement guide for the ABC Act. (See http://www.abc.ca.gov/trade/TEU Information Guide 2009 v2.pdf attached hereto as Exhibit "B."). Although not binding authority, the TEIG illustrates the practical application of the current law as interpreted by the California Department of Alcohol Beverage Control. The TEIG addresses the Business and Professions Code, specifically those sections relevant to the licensure requirements for events of various types where alcohol is provided. Under the sub-section entitled "Private Parties," the TEIG clearly indicates an alcohol license is required and an event is not a "private party" if ***any*** of the three elements delineated by B&P Code section 23399.1 are met. Interestingly, the TEIG further states: "Be aware that the definition of 'sale' includes ***indirect transactions*** other than merely paying for a glass of wine or other drink containing alcohol. (*Id.*; Bus. & Prof. Code §§ 23025, 25604 (emphasis added).) For instance, ***if an admission fee is charged*** or there is a charge for food and the alcohol is included, but not separately charged, ***an ABC license is required.***" (*Id.*; Bus. & Prof. Code §§ 23025, 25604 (emphasis added).)

California case law also provides some guidance as to the meaning of "sell" or "causing to sell" alcohol within the meaning of B&P Code Section 25602.1. (*Hernandez v. Modesto Portuguese Pentecost Association* (1995) 40 Cal.App.4th 1274, 1282.) In *Hernandez*, plaintiffs, the surviving passenger and relatives of three deceased minors from a single-vehicle accident, brought a civil action under B&P Code section 25602.1 against the owner of a building who rented the premises to a third party tenant for an evening dance where alcohol was served to another minor. In affirming summary judgment for the defendant building owner, the court found that simply providing the premises where alcohol was served by a third party tenant did not constitute "causes to be sold" under section 25602.1. The appellate court held that civil liability under B&P Code section 25602.1 requires an affirmative act which ***relates*** to the sale of alcohol and necessarily brings about the resultant action to which the statute is directed. (*Id.* (emphasis

added).) The court explained ***one who, having control over alcohol, directs or explicitly authorizes another to sell it to a minor who is already intoxicated falls within the statutory language [of section 25602.1].*** (*Id.* (emphasis added).) On the other hand, merely providing a room where alcoholic beverages will be sold by other is not sufficient to satisfy section 25602.1's phrase, "causes [alcohol] to be sold." (*Id.*) The apparent intent of 25602.1 is to subject potential liability to those persons who, either personally ***or through an agent***, are in the position to detect signs of intoxication in a minor seeking to obtain alcohol from the person, and can refuse alcohol to that minor in order to protect the minor and reduce the potential that the minor will cause personal injury to himself or others as a result of his intoxication. (*Id.* at 1282-83 (emphasis added).)

While the *Ennabe* court gave no weight to the November 2009 Trade Enforcement Information Guide (TEIG) published by the Department of Alcoholic Beverage Control, plaintiffs find no reason why that court did not consider B&P Code sections 23025 and 25604 and the *Hernandez* case when it determined that no "sale" occurred on the day of the incident. First, the use of the terms "***any*** transaction" within B&P Code section 23025 supports the position that both direct and indirect transactions, i.e., where consideration is not directly exchanged for a glass or bottle of alcohol, constitute a "sale" of alcohol given the legislature's use of the word "any." There is no dispute that defendant charged a cover charge of $3 to $5 and furnished alcohol, glassware, mixers, and ice to strangers at her party. [2AA 354:5-13, 365:4-19, 389-391, 402-404.] By accepting the $3 to $5, defendant was transferring title to alcohol she already purchased to anyone who wished to drink it once they paid her the requisite fee. Second, the use of the terms "***any*** consideration" within B&P Code section 23025 supports the position that any form of payment, i.e. monetary exchange or the exchange of goods or services for alcohol or the right to alcohol, for any amount constitutes a "sale" also given the legislature's use of the word "any." Under the reasoning in *Hernandez*, the defendant in the instant matter "caused alcohol to be sold" because she

arranged for a bouncer (her agent), direct him to charge others a cover charge for alcohol she had already purchased and the means for its consumption. In sum, all of these acts ***relate*** to the sale of alcohol.

VI. CONCLUSION

For the forgoing reasons, plaintiffs respectfully request that this Court review the Court of Appeal's Opinion in this matter.

Respectfully submitted,

DATED: January 4, 2011

By 

Abdalla J. Innabi
Amer Innabi
INNABI LAW GROUP, APC
Attorneys for Plaintiffs and Appellants,
FAIEZ and CHRISTINA ENNABE,
individually and on behalf of THE
ESTATE OF ANDREW ENNABE

CERTIFICATE OF COMPLIANCE

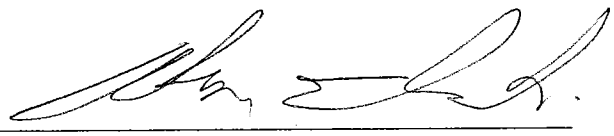
I, Abdalla J. Innabi, declare that:

I am an attorney in the law firm of Innabi Law Group, APC, which represent plaintiffs and appellants Faiez and Christina Ennabe, individually and on behalf of the Estate of Andrew Ennabe.

This Petition for Review was produced with a computer using Microsoft Word. It is proportionately spaced in 13-point Times Roman typeface. The brief contains 8,392 words including footnotes, excluding the tables and this certificate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2011 at Pasadena, California.



Abdalla J. Innabi

Exhibit "A"

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FAIEZ ENNABE, Individually and as Administrator, etc., et al., Plaintiffs and Appellants, v. CARLOS MANOSA et al., Defendants and Respondents.	B222784 (Los Angeles County Super. Ct. No. KC053945)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert A. Dukes, Judge. Affirmed.

Innabi Law Group, Abdalla J. Innabi and Amer Innabi for Plaintiffs and Appellants.

Morris, Polich & Purdy, Richard H. Nakamura, Jr., Dean A. Olson and Sheena Y. Kwon for Defendants and Respondents.

Civil Code section 1714, subdivision (c)[1] provides broad immunity from civil liability for a social host who "furnishes alcoholic beverages to any person." Under Business and Professions Code section 25602.1, the social host loses that immunity if he or she "sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor."[2] In this case of first impression, we hold that a social host charging guests an

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[1] Civil Code section 1714 provides in pertinent part: "(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (1971) 5 Cal.3d 153, Bernhard v. Harrah's Club (1976) 16 Cal.3d 313, and Coulter v. Superior Court (1978) 21 Cal.3d 144 and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person. [¶] (c) No social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages."

On January 1, 2011, an amended version of Civil Code section 1714 will take effect which adds subdivision (d) to provide: "Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death." (Civ. Code, § 1714, subd. (d), added by Stats. 2010, ch. 154, § 1.)

[2] Unspecified statutory references are to the Business and Professions Code.

Section 25602.1 provides: "Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against *any person* licensed, or *required to be licensed, pursuant to Section 23300*, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, *who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage*, and **any other person who sells, or causes to be sold, any alcoholic beverage**, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person." (Italics and boldface added.)

The portions of section 25602.1 in italics and bold type are at issue in this appeal. We refer to the italicized portion as the "required to be licensed" clause and the bold portion as the "any other person who sells" clause.

admission or entrance fee of $3 to $5 to a party where alcoholic beverages are available has not sold or caused to be sold an alcoholic beverage under Business and Professions Code section 25602.1 and is not civilly liable for damages for admitting to the party an obviously intoxicated minor who, upon leaving the party, drives his car into a pedestrian, another partygoer, killing him. Nor is such a social host "required to be licensed" within the meaning of Business and Professions Code section 25602.1. We therefore affirm the summary judgment granted in favor of defendant Jessica Manosa on the amended complaint of plaintiffs Faiez and Christina Ennabe for the wrongful death of their son, Andrew Ennabe.[3]

BACKGROUND

Although some of the facts are disputed, we view the record in a light most favorable to the plaintiffs and assume as true the plaintiffs' version of all disputed facts presented in opposition to the summary judgment motion. (*Wilson v. Murillo* (2008) 163 Cal.App.4th 1124, 1128.)

In April 2007, 20-year-old Manosa hosted a house party at a vacant rental residence owned by her parents. The party was publicized to friends and non-friends by word-of-mouth, telephone, and text messaging, resulting in approximately 40 to 60 people in attendance. The majority of the people at the party were under age 21, and about one-third were unknown to Manosa. Earlier in the day, Manosa contributed $60 and two of her friends together contributed another $60 to purchase beer, tequila, and rum. According to Manosa, one of her two friends used fake identification to purchase the alcoholic beverages, but in their depositions the friends denied purchasing or supplying any of the alcoholic beverages. The alcoholic beverages were "communal"

Section 23300 provides: "No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."

[3] Manosa's parents, defendants Mary and Carlos Manosa, also obtained a summary judgment in their favor, but plaintiffs do not challenge the judgment as to them.

and available without limitation to the partygoers. Some guests brought their own alcoholic beverages to the party.

Guests gained access to the party by entering the rear yard of the house through a side walkway. Stationed at the walkway entrance was Todd Brown, a friend of a friend of Manosa. Manosa directed Brown to serve as a "bouncer" and to charge unfamiliar guests an admission fee. Unfamiliar partygoers were charged from $3 to $5. Payment of the fee allowed partygoers admission onto the property, an opportunity to enjoy music played by a professional disc jockey, and "access to whatever food and drink were there," including several cases of beer, three to four bottles of tequila and rum, and a cooler of hard alcoholic beverages with fruit juice, known as "jungle juice."

Between $50 and $60 were collected from the entrance fee; some of that money was used to buy additional alcoholic beverages during the course of the party.

Andrew Ennabe, age 19, a friend of Manosa, was not charged an admission fee. Earlier, Ennabe had been to another party. He arrived at Manosa's party in a state of obvious intoxication, and there he drank more alcoholic beverages. Thomas Garcia, age 20, was unknown to Manosa. Garcia was admitted to Manosa's party after he paid an admission fee for himself and a group of his friends. The person who took his money told him that there were alcoholic beverages if he wanted them. When Garcia arrived at Manosa's party, he was in a state of obvious intoxication. At the party he drank alcoholic beverages and acted in a rowdy and belligerent manner. After Garcia harassed female guests and dropped his pants several times, he was asked to leave the party. Ennabe and some other guests escorted Garcia off the premises and to his car. In driving away, Garcia struck Ennabe, who died a week later from his injuries. Garcia was convicted of a felony in connection with the death of Ennabe and sentenced to 14 years in prison.

Manosa did not know Garcia or his friends; she never saw Garcia during the party, did not know he was there, and was not aware of any problems with Garcia or other party guests. The April 2007 party was the only social gathering Manosa had held on the property.

Andrew Ennabe's parents, on behalf of themselves and the estate of their son, filed a wrongful death action against Manosa. After answering the amended complaint, Manosa moved for summary judgment on the grounds that she was immune from liability under Civil Code section 1714 and that Business and Professions Code section 25602.1 was not applicable. In opposition to the motion, plaintiffs argued that Manosa was not acting as a "social host" under Civil Code section 1714, subdivision (c) because she charged a fee to unknown and uninvited guests and that Manosa had forfeited immunity from civil liability under Business and Professions Code section 25602.1 for the same reason. After a hearing, the trial court granted the motion and rendered a summary judgment in Manosa's favor. Plaintiffs appealed.

DISCUSSION

Plaintiffs seek to impose civil liability on Manosa under the "required to be licensed" and the "any other person who sells" clauses of section 25602.1. As explained below, we conclude that the facts viewed most favorably to plaintiffs establish as a matter of law that Manosa (1) did not "sell or cause to be sold" an alcoholic beverage and (2) was not "required to be licensed" within the meaning of section 25602.1.

We exercise a de novo standard in reviewing a ruling on a summary judgment motion and underlying statutory construction issues. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1081–1082 (*MacIsaac*); *Barner v. Leeds* (2000) 24 Cal.4th 676, 683 [statutory construction].)

The objective of statutory interpretation is to determine legislative intent. (*MacIsaac*, *supra*, 134 Cal.App.4th at p. 1082.) "'If the words are clear, a court may not alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. [Citation.] At the same time, however, a statute is not to be read in isolation; it must be construed with related statutes and considered in the context of the statutory framework as a whole. [Citation.] A court must determine whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other related provisions. Literal construction of statutory language will not prevail if contrary to the legislative intent apparent in the statutory

scheme. [Citation.] Statutory language should not be given a literal meaning that results in absurd and unintended consequences. [Citations.]'" (*Kalway v. City of Berkeley* (2007) 151 Cal.App.4th 827, 833.) "We may also look to a number of extrinsic aids, including the statute's legislative history, to assist us in our interpretation." (*MacIsaac*, *supra*, 134 Cal.App.4th at p. 1083, fn. omitted.)

A. Legislative History of Section 25602.1

"It is well settled that the Legislature possesses a broad authority both to establish and to abolish tort causes of action. As former Chief Justice Gibson put it over 30 years ago, 'Except as the Constitution otherwise provides, the Legislature has complete power to determine the rights of individuals. [Citation.] It may create new rights or provide that rights which have previously existed shall no longer arise . . . .' [Citations.]" (*Cory v. Shierloh* (1981) 29 Cal.3d 430, 439, quoting *Modern Barber Col. v. Cal. Emp. Stab. Com.* (1948) 31 Cal.2d 720, 726.)

In the 1970's in a series of three cases, our Supreme Court applied common law negligence principles to cases involving injuries caused by a person who had consumed alcoholic beverages. (See *Vesely v. Sager*, *supra*, 5 Cal.3d 153 (*Vesely*); *Bernhard v. Harrah's Club*, *supra*, 16 Cal.3d 313; *Coulter v. Superior Court*, *supra*, 21 Cal.3d 144.) "In reaction to these decisions, rare in terms of its specificity, the Legislature adopted section 25602, subdivisions (b) and (c) and stated that '. . . this section shall be interpreted so that the holdings in cases such as *Vesely* . . . *Bernhard* . . . and *Coulter* . . . be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.' (§ 25602, subd. (c).) Similar directive language was adopted as an amendment to Civil Code section 1714. (Civ. Code, § 1714, subd. (b).)" (*Salem v. Superior Court* (1989) 211 Cal.App.3d 595, 599–600.) In 1978, the Legislature enacted subdivision (c) of Civil Code section 1714.

Also enacted in 1978, the original version of Business and Professions Code section 25602.1 provided a narrow exception to the broad immunity created by Business and Professions Code section 25602 and Civil Code section 1714. Under former

Business and Professions Code section 25602.1, civil liability could be imposed on a licensee who "sells, furnishes, gives, or causes to be sold, furnished or given away" an alcoholic beverage to an obviously intoxicated minor. (Former § 25602.1; *Zieff v. Weinstein* (1987) 191 Cal.App.3d 243, 248.)

In 1986, section 25602.1 was amended to its current version (see *ante*, fn. 2), which broadens the exceptions to tort immunity. (*Baker v. Sudo* (1987) 194 Cal.App.3d 936, 943 [1986 amendments to section 25602.1 are not retroactive].) As pertinent to this appeal, causes of action may now be asserted against (1) "any person . . . required to be licensed, pursuant to Section 23300 . . . who sells, furnishes, gives or causes to be sold, furnished or given away" any alcoholic beverage to an obviously intoxicated minor and (2) "any other person who sells, or causes to be sold, any alcoholic beverage" to an obviously intoxicated minor.

According to an analysis of the 1986 bill which amended section 25602.1, "The purpose of this bill is to close gaps in the law which impose civil liability for selling alcohol to obviously intoxicated minors. [¶] According to the Senate Judiciary Committee analysis, [former section 25602.1] presently imposes potential civil liability for serving obviously intoxicated minors only upon liquor (and beer and wine) licensees. Thus, the status of the provider, i.e., whether or not the person is a licensee, is a determinative factor. [¶] . . . [¶] The narrowness of the statute has been criticized. [¶] The bill would impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by any person required to be licensed. This provision is intended to cover the seller operating without a license or with an expired, suspended or revoked license. The provision would not apply to the furnishing of alcohol by a social host." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1053 (1985–1986 Reg. Sess.) as amended June 18, 1986, p. 2.) In a paragraph captioned, "ARGUMENTS IN SUPPORT," the analysis stated: "According to the author's office, there is no reason to maintain the distinction between a licensed and a nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a

sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public. Further, the effect of the distinction may not have been foreseen or intended by the Legislature." (*Ibid.*)

After the 1986 amendments, the courts have continued to construe section 25602.1 strictly: "Section 25602.1 is a narrow exception to the Legislature's enactment of what our Supreme Court has termed 'sweeping civil immunity' from liability for injuries to third persons resulting from the furnishing of alcohol to another. [Citations.] As the sole exception to statutory immunity, section 25602.1 must be strictly construed to effect the Legislature's intent. [Citation.]" (*Hernandez v. Modesto Portuguese Pentecost Assn.* (1995) 40 Cal.App.4th 1274, 1281, fn. omitted [no liability for owner of building renting hall to sponsor of dance where alcoholic beverage served to minor].) The phrase "causes to be sold" in section 25602.1 "requires malfeasance, not acquiescence or mere inaction. [Citation.] The statute requires 'an affirmative act directly related to the sale of alcohol, which necessarily brings about . . . the furnishing of alcohol to an obviously intoxicated minor.' [Citation.]" (*Elizarraras v. L.A. Private Security Services, Inc.* (2003) 108 Cal.App.4th 237, 243 [private security company for nightclub serving alcoholic beverages to minors was not liable when minors left nightclub and were killed in car crash].)

With this legislative history in mind, we address the issues of whether Manosa is liable under the "any other person who sells" clause or the "required to be licensed" clause of section 25602.1.

As a preliminary matter, we reject plaintiffs' reading of section 25602.1 as imposing civil liability on *any person* who furnishes, sells, or gives alcoholic beverages to an obviously intoxicated minor. The language upon which plaintiffs rely is in the final clause of the statute, which contains the "proximate cause" requirement. The reference in the "proximate cause" clause to "furnishing, sale or giving of that beverage to the minor" is not intended to enlarge the scope of the preceding provisions, but merely to apply the proximate cause requirement in a global fashion to each preceding class of persons to be held liable. Plaintiffs' interpretation of the statute would render meaningless or

surplusage the provisions applicable to licensees, those required to be licensed, military bases, and the "any other person who sells" clause. Because we must give effect to all statutory provisions (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1155), we reject plaintiffs' proposed interpretation of the statute.

B. Manosa is Not Liable Under the "Any Other Person Who Sells" Clause of Section 25602.1

Although the Alcoholic Beverage Control Act (§ 23000 et seq.) contains a definition of "sell," "sale," and "to sell" in section 23025, the definition by itself does not resolve the issue of whether a social host who collects money from guests for a common fund with which to purchase alcoholic beverages or to help defray the cost of obtaining alcoholic beverages is a person "who sells, or causes to be sold," an alcoholic beverage within the meaning of section 25602.1.

Section 23025 defines "sell," "sale," and "to sell" as including "any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased."

Section 23025 requires that there be a transaction, for consideration, whereby title to an alcoholic beverage is transferred from "one person to another." The statute thus contemplates a transaction in which one person relinquishes title to the alcoholic beverage and another person receives title to the alcoholic beverage. In the case of a social host, like Manosa, charging guests an admission or entrance fee of $3 to $5 to help defray the cost of providing "communal" alcoholic beverages to guests who serve themselves, there is no transfer of title to an alcoholic beverage at the time the entrance fee is paid. If any transfer of title occurs, it is only when the guests consume the alcoholic beverage.

But it is difficult, if not impossible, to determine which individual or individuals held title to the alcoholic beverages consumed by Garcia because not only Manosa, but

two of her friends as well, contributed the money to obtain the initial alcoholic beverages. Other guests paying an entrance fee, including Garcia himself, contributed the money used to obtain additional alcoholic beverages during the party. Hence, Manosa and all of her paying guests may be said to have provided alcoholic beverages to each other, making Manosa and all of the guests both sellers and purchasers. Under such circumstances, it would be unreasonable to deem a sale to have occurred within the meaning of sections 25602.1 and 23025.

Because the legislative history of section 25602.1 indicates that the 1986 amendment was not intended to affect the liability of a social host who furnishes alcoholic beverages, and because the definition of "sell" in section 23025 does not fit the situation of the social host, we conclude that a social host who charges guests an admission or entrance fee of $3 to $5 to help defray the costs of making alcoholic beverages available to his or her guests is not a person who "sells, or causes to be sold" an alcoholic beverage within the meaning of section 25602.1. There is, quite simply, no indication in the language or legislative history of section 25602.1 that the Legislature intended to impose liability on social hosts and guests who contribute money to a common fund to purchase alcoholic beverages for a social occasion.

Our interpretation of section 25602.1 is consistent with the result in the only other case in California addressing the issue of the liability of a minor social host where money is pooled to purchase alcoholic beverages for a party. Although *Bennett v. Letterly* (1977) 74 Cal.App.3d 901 (*Bennett*) predated the 1978 legislation discussed above, the case is instructive because it addressed the scope of "furnishing" under a former version of section 25658, subdivision (a), making it a misdemeanor to sell, furnish, give, or cause to be sold, furnished or given away to a minor any alcoholic beverage. (*Bennett*, at p. 904.) In *Bennett*, Letterly, a minor, hosted a party at his home for his classmates when his parents were away on vacation. Letterly and a friend, Howell, both contributed money to a common fund to purchase alcoholic beverages. Three minors, Howell, Alvarez, and Baca, left the party and went to a local liquor store, where Alvarez persuaded an unknown adult to buy liquor for them, using the pooled money. Upon

returning to the party, Howell poured and mixed his own whiskey drink and served himself. Howell later drove his car into Bennett's car, injuring Bennett.

In upholding a summary judgment granted in favor of Letterly, the Court of Appeal rejected Bennett's argument that Letterly was civilly liable based on a violation of former section 25658, subdivision (a). The court reasoned, "Assuming for the purpose of argument that the rule of *Vesely*[, *supra*, 5 Cal.3d 153,] . . . applies to a purely social situation such as that presented here, and is otherwise applicable to the facts of the case at bench, we have concluded that the conduct of [Letterly] does not constitute furnishing or causing to be furnished an alcoholic beverage to a minor in violation of . . . section 25658, subdivision (a)." (*Bennett*, *supra*, 74 Cal.App.3d at p. 904, fn. omitted.) As to the definition of the term "furnish," the court stated: "In relation to a physical object or substance, the word 'furnish' connotes possession or control over the thing furnished by the one who furnishes it. [Citation.] The word 'furnish' implies some type of affirmative action on the part of the furnisher; failure to protest or attempt to stop another from imbibing an alcoholic beverage does not constitute 'furnishing.' [Citation.]" (*Bennett*, at p. 905.)

The court in *Bennett* concluded: "The undisputed facts are that [Letterly] did no more than contribute $2 to $5 to a common fund intended to be used for the purchase of liquor. He did not himself purchase the liquor. There is no evidence that, once the alcohol was purchased and brought back to [Letterly's] house, he exercised any control over, or even handled, the bottle of whiskey Howell and Baca consumed. All the evidence indicates that Howell and Baca consumed the entire bottle of whiskey, pouring and mixing their own drinks and serving themselves. On these facts, [Letterly] was not guilty of furnishing an alcoholic beverage or causing such to be furnished in violation of section 25658, subdivision (a)." (*Bennett*, *supra*, 74 Cal.App.3d at p. 905; see also *Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, 1157 [characterizing *Bennett* as standing for proposition that "the mere act of contributing to a common fund for the purchase of liquor [does not] constitute furnishing where the defendant never exercised any control over the alcohol consumed by his companions"].)

Because the Legislature is deemed to be aware of statutes and judicial decisions already in existence when it enacts and amends statutes (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1096), we deem the Legislature to have been aware of *Bennett* and to have approved its narrow definition of "furnish" when it enacted Business and Professions Code section 25602.1 and Civil Code section 1714, subdivision (c) in 1978.

Accordingly, we conclude that, as a matter of law, Manosa was not a person who "sells, or causes to be sold," an alcoholic beverage within the meaning of section 25602.1.

C. Manosa is Not Liable Under the "Required to be Licensed" Clause of Section 25602.1

Relying on section 23399.1 and an interpretation of section 23399.1 as applied to private parties in the Department of Alcoholic Beverage Control's November 2009 Trade Enforcement Information Guide (TEIG), plaintiffs argue that Manosa fell within the "required to be licensed" clause of section 25602.1.

Section 23399.1 provides: "No license or permit shall be required for the serving and otherwise disposing of alcoholic beverages where all of the following conditions prevail: [¶] 1. That there is no sale of an alcoholic beverage. [¶] 2. That the premises are not open to the general public during the time alcoholic beverages are served, consumed or otherwise disposed of. [¶] 3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages. [¶] Provided, however, that nothing in this section shall be construed to permit any person to violate any provision of the Alcoholic Beverage Control Act."

The circumstances of this case establish that no license was required for Manosa's party because the three conditions of section 23399.1 were met. For the reasons set out in part B of the Discussion, we conclude that there was no sale of an alcoholic beverage to Garcia within the meaning of sections 23399.1, 25602.1, and 23025. In a section of the TEIG dealing with private parties, a note provides, "Be aware that the definition of 'sale' includes indirect transactions other than merely paying for a glass of wine or other drink containing alcohol. For instance, if an admission fee is charged or there is a charge for

food and the alcohol is included, but not separately charged, an ABC license is required." (Cal. Dept. of Alcoholic Beverage Control, TEIG (Nov. 2009).) The TEIG cites no authority for its definition of sale; it does not discuss Business and Professions Code section 23025 or Civil Code section 1714, subdivision (c). We give the definition of "sale" in the TEIG no weight because it does not appear to address the statutes or issues presented in this appeal.

The remaining two conditions of section 23399.1 are met: the residence where Manosa held her party was not open to the general public, but only to those to whom the party was publicized; and the residence, used by Manosa for a party on only that one occasion, was not maintained for the purpose of keeping, serving, consuming, or disposing of alcoholic beverages.

For the foregoing reasons, we conclude that, as a matter of law, Manosa does not fall within the "required to be licensed" clause of section 25602.1.

As Manosa does not fall within the exceptions to immunity from civil liability set out in section 25602.1, we need not address other issues raised in her brief.

DISPOSITION

The judgment is affirmed. Defendant Jessica Manosa is entitled to her costs on appeal.

CERTIFIED FOR PUBLICATION.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FAIEZ ENNABE, Individually and as Administrator, etc., et al., Plaintiffs and Appellants, v. CARLOS MANOSA et al., Defendants and Respondents.	B222784 (Los Angeles County Super. Ct. No. KC053945) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed on December 1, 2010, be modified as follows:

On page 3, the fourth and fifth sentences of the second paragraph of the Background section are deleted and replaced with the following sentence:

> Earlier in the day, Manosa provided money to purchase beer, tequila, and rum.

Appellants' petition for rehearing is denied.

There is no change in the judgment.

MALLANO, P. J. CHANEY, J. JOHNSON, J.

Exhibit "B"

Trade Enforcement Information Guide

November 2009

NOTE: The information contained in this Guide is intended to be a quick reference to common questions and issues involving Trade Practices. It is not intended to and does not replace or change the information contained in the ABC Act, case law or the California Code of Regulations.

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agent of the supplier, even if no money is given or trade has occurred. This would be considered "joint advertising" and is prohibited.

Event Sponsorship by Non-Retail Licensee at Retail Premises

Generally, suppliers of alcoholic beverages cannot sponsor events at retail licensed premises. There are some statutory exceptions contained in the ABC Act for particular venues, such as certain arenas, stadiums, etc.

Sponsorship of Station Concert Hotlines by Non-Retailers

Alcoholic beverage suppliers cannot buy title sponsorship of "Hot Lines" or "Event Lines" from radio stations which listeners call to hear a listing of events at retail locations nor may they be referenced as a sponsor of such "Lines."

NON-RETAIL SALES OF ALCOHOLIC BEVERAGES

A person who wants to import and sell beer or wine to wholesalers only should apply to this Department for a beer and wine importer's general (Type 10) license. To import and sell beer or wine to retailers and wholesalers, a beer and wine importer's (Type 09) license and a beer and wine wholesaler's (Type 17) license are needed. On the other hand, if an out-of-state person merely wishes to sell or ship to California licensed importers and will not establish a business in California in that representatives would only be in the state on a sporadic basis to make general arrangements or to do general missionary work, and he/she will not warehouse or import alcoholic beverages into California and/or hire any California residents as employees, or otherwise establish a business presence in California, no licenses would be required. Importer licenses are not required for companies that obtain beer and/or wine solely from sources within California.

A person who wants to import and sell distilled spirits to wholesalers only should apply to this Department for a distilled spirits importer's general (Type 13) license. To import and sell distilled spirits to retailers and wholesalers, a distilled spirits importer (Type 12) license and a distilled spirits wholesaler (Type 18) license are required. On the other hand, if an out-of-state person merely wishes to sell or ship to California licensed importers and will not be establishing a business in California in that representatives would only be in the state on a sporadic basis to make general arrangements or to do general missionary work, and he/she will not warehouse or import alcoholic beverages into California and/or hire any California residents as employees, or otherwise establish a business presence in California, no licenses would be required.

Out-of-state or foreign distillers that have a sales office or other business presence in California should apply for a Distilled Spirits Manufacturer's Agent (Type 05) license.

Alcoholic beverages can be brought into California only by common carriers and only when the beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed by this Department. Section 32109 of the Revenue and Taxation Code provides that common carriers (except railroad and steamship companies) before engaging in the business of transporting shipments of alcoholic beverages into this state must register with the California Board of Equalization and make application for an interstate alcoholic beverage transporter's permit. Direct shipment of alcoholic beverages to California retailers is prohibited.

Applications for licenses are obtained from the district office having jurisdiction over the geographical location of the business.

PRIVATE PARTIES

Section 23399.1 of the California Business & Professions Code explains the circumstances when an alcoholic beverage license is not required:

1. That there is no sale of an alcoholic beverage.
2. That the premises are not open to the general public during the time alcoholic beverages are served, consumed or otherwise disposed of.
3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages.

All three of the above elements must exist. If a proposed event meets the statutory definition of a "private party," then no ABC license is required.

Note: Any event occurring on a licensed premises is not a "private party" under this provision. Events or activities on a licensed premises are subject to all rules and regulations applying to the licensee.

Be aware that the definition of "sale" includes indirect transactions other than merely paying for a glass of wine or other drink containing alcohol. For instance, if an admission fee is charged or there is a charge for food and the alcohol is included, but not separately charged, an ABC license is required.

Note: No provision of the ABC Act may be violated even though the event itself does not require a license.

If a license is required, or you have a question about a particular event, you should contact the ABC district office closest to where the event will occur.

RECORDS

Records of alcoholic beverage sales transactions should be kept separate from non-alcoholic beverage sales records, and should be kept for a period of three years. Records must be readily accessible and provided to the Department upon request.

Maintain Alcoholic Beverage License Information with Records
Business and Professions Code Section 23300 requires sellers of alcoholic beverages to obtain an alcoholic beverage license. Suppliers must determine the validity of a retailer's alcoholic beverage license before selling alcoholic beverages to that retailer. Suppliers should maintain license numbers and license status changes with their customer records to prevent sales to unlicensed persons.

RETAIL SALES PRICE

The Department of Alcoholic Beverage Control does not regulate the retail price of alcoholic beverages.

RETAILER-TO-RETAILER PURCHASES OF ALCOHOLIC BEVERAGES

Business and Professions Code Section 23402 requires permanent retail on- and off-sale licensees to purchase alcoholic beverages for resale from wholesalers, manufacturers, winegrowers, or rectifiers. Daily On-Sale General licensees must purchase distilled spirits from off-sale general retail license holders. Please note that warehouse stores such as Costco, Sam's Club, etc. are *retailers* and state law prohibits retailers from selling alcoholic beverages for resale, except to holders of a Daily On-Sale General license.

RETURNS OF ALCOHOL BY CONSUMERS TO RETAILERS

Section 25600 authorizes the return (for refund or exchange) of alcoholic beverages to the seller by **dissatisfied** consumers. The advertising of "money-back guarantees" by retailers is specifically disapproved.

Note: State law does not require the seller to accept a return or make an exchange of alcoholic beverages. This is discretionary with the licensee.

PROOF OF SERVICE
BY OVERNIGHT COURIER AND PERSONAL SERVICE

CASE NAME: **Ennabe et al. v. Manosa et al.**
COURT OF APPEAL CASE NUMBER: **B222784**
SUPERIOR COURT CASE NUMBER: **KC053945**

I, the undersigned, declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a Citizen of the United States and resident of the County of Los Angeles where the within-mentioned service occurred.

2. My business address is 107 S. Fair Oaks Ave., Suite 208, Pasadena, California 91105.

3. On 01/06/11, I served the ***PETITION FOR REVIEW*** by overnight courier or personal service as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and Federal Express picked up the envelopes in Pasadena, California, for delivery as follows:

Richard H. Nakamura
Dean A. Olson
Sheena Y. Kwon
MORRIS POLICH & PURDY LLP
1055 West Seventh Street, 24th Floor
Los Angeles, CA 90017
(*one copy*)

Clerk of the Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(one original & 13 copies)

Honorable Robert A. Dukes, Judge
Superior Court of California, East District
Los Angeles County – Department R
400 Civic Center Plaza,
Pomona, CA 91766
(one copy)

Clerk of the Court
Court of Appeal
Second Appellate District,
Division 1
300 So. Spring St. 2nd Fl
Los Angeles, CA 90013
(*one copy*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 01/06/11

AMER INNABI
Print

Signature