

1 Melani Johns, Cal. Bar No. 289155
2 Kristen Techel, Cal. Bar No. 228636
3 Strike & Techel, Beverage Law Group LLP
4 556 Commercial Street
5 San Francisco, California 94111
6 Tel: (415) 226-1400
7 Fax: (415) 970-5090
8 Email: Melani@alcohol.law
9 Kristen@alcohol.law

10 Attorneys for Respondent,
11 Relic Wine Cellars, LLC

12 **ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**
13 **OF THE STATE OF CALIFORNIA**

14 LAWRENCE CARR, ET AL

15 Appellants/Protestants

16 v.

17 RELIC WINE CELLARS, LLC

18 Applicant/Respondent

19 AB No. 9587

20 File No. 02-548261

21 Reg. No: 15082334

22 **RESPONDENT'S REPLY BRIEF ON**
23 **APPEAL**

24 Appeal Hearing Date: December 7, 2017

1 **I. INTRODUCTION**

2 Respondent Relic Wine Cellars, LLC (“Respondent” or “Relic”) submits this brief in response
3 to the appeal filed by Appellants Lawrence Carr, et. al (“Appellants”). Respondent seeks to uphold
4 the Decision of the Department of Alcoholic Beverage Control (“ABC” or the “Department”) of
5 April 15, 2016, denying Appellants’ protest against the issuance of a Type 02 winegrower’s license
6 (“Decision”). The Department issued its Decision after conducting a thorough investigation and
7 considering all of the issues raised in Appellants’ protests and weighing their concerns over the
8 collective course of five days of hearing.¹ The Department properly exercised its discretion in
9 denying Appellants’ protests, and Respondent now requests that the Appeals Board (“Board”) affirm
10 the Decision and reject Appellants’ appeal.

11 Appellants not only request that this Board either reverse and remand the lower court’s
12 decision, or outright deny the license, they also seek to introduce a multitude of new and/or
13 previously rejected cumulative and irrelevant evidence, none of which is proper on appeal. As
14 described herein, this appeal comes on the heels of a five-day protest hearing, almost the entirety of
15 which was devoted to Appellants’ protests. Throughout the hearing, Appellants sought to introduce
16 thousands of pages of evidence, almost all of which was cumulative and irrelevant to the issue of
17 whether Relic should be issued a winery license. Appellants now ask this Board to consider this
18 evidence, a request that must be denied.

19 **II. PROCEDURAL HISTORY**

20 In 2009, Schatzi Throckmorton and Mike Hirby purchased property at 2400 Soda Canyon Rd.
21 in Napa Valley, California, with hopes of building a winery on premises. (HD 7/16/15, 94:16-24). In
22 2010, they applied for a Conditional Use Permit (“CUP”) with the county of Napa to put a winery on
23 their property, like several of their neighbors on the road. (Decision, Finding of Fact No.5, 10.) The
24 Napa Board of Supervisors voted 5-0 to approve the CUP. (Decision, Finding of Fact No. 5.) Several
25 Appellants were a part of the CUP process, including neighbor David Hallett. David Hallett and
26 another neighbor threatened to appeal the Board’s decision and ultimately Relic entered into a

27
28 ¹ The five-day transcript totals almost 1,000 pages of testimony (excluding exhibits). For the sake of clarity, references to
the transcript will reference the hearing date, followed by page and line references (Ex.: HD 02/11/16, 57:03-18.)

1 settlement agreement with those neighbors, significantly limiting the number of tastings and events
2 held at the winery. (HD 02/11/16, 46:6-23; Decision, Finding of Fact No. 5; Applicant’s Exhibit B.)
3 They agreed to withdraw their appeal in exchange for a voluntary reduction in the amount of tasting
4 room visitors that Relic is allowed, reduced from 6,640 to 4,498 annual visitors. (Decision, Finding
5 of Fact No. 5; HD 07/16/15 16:5-7.)

6 In August 2014, Relic applied for a Type 02 winegrower’s license with the Department of
7 Alcoholic Beverage Control (“ABC”). (Decision, Finding of Fact No. 1.) Appellants protested
8 issuance of the license on several grounds, arguing that issuance of the license would: 1) unduly
9 interfere with the neighbors’ quiet enjoyment of their property, 2) cause an unacceptable level of
10 traffic congestion, 3) create fire risks, and 4) be contrary to local zoning ordinances. (Decision, Issues
11 to be Determined (1-4)).

12 The ABC conducted a thorough investigation of applicants and their winery premises. (State’s
13 Exhibit 2, 220 Report.) During the course of the investigation, the license investigator confirmed that
14 the location was properly zoned for the requested use and that issuance of the license would not be
15 contrary to public welfare or morals. (State’s Exhibit 2, 220 Report; Decision, Finding of Fact No. 1,
16 8, 11, 12.)

17 The initial hearing date was held on July 16, 2015, before Administrative Law Judge (“ALJ”)
18 Loehr. On that date, the ABC and Relic both presented their cases. Protestants began to present their
19 case and it soon became clear that the matter would need to be continued as Protestants had a great
20 deal of evidence to present and would not be able to do so in the allotted time. The matter was
21 continued to the fall of 2015, again to be heard before ALJ Loehr, before his retirement. Prior to the
22 fall hearing Appellants requested a continuance over Respondent’s objection and a hearing was held
23 on November 16, 2015, before ALJ Loehr. Ultimately, the matter was continued and an additional
24 three days of hearings were set for February 9-11, 2016.

25 ALJ Loehr retired and the continued hearing was heard before ALJ Sakamoto. During the
26 additional three days of hearing, Protestants spent almost the entirety of the time discussing issues of
27 quiet enjoyment, road conditions, and fire concerns. Numerous witnesses testified and they sought to
28 introduce a great deal of evidence, most of which was cumulative and/or irrelevant to the issue of

1 Relic’s winery license application. Ultimately, ALJ Sakamoto allowed a great deal of the evidence in,
2 opting to give the evidence the weight it deserved. (HD 02/11/16, 102-131.)

3 On April 15, 2016, after carefully weighing the facts and evidence, the lower court issued its
4 Decision, rejecting Appellants’ protests and granting issuance of Relic’s Type 02 winegrower license.
5 On May 18, 2016, Appellants filed a Notice of Appeal, arguing that evidence at hearing was
6 improperly excluded, the Department’s findings were not supported by substantial evidence, or in the
7 alternative, the Department’s Decision was not supported by the findings. On August 17, 2016,
8 Appellants filed a 75-page opening brief (“Opening Brief”) in which they outlined their arguments on
9 appeal and seek to introduce additional evidence that they either failed to produce at hearing, argue
10 was improperly rejected by the lower court, or claim refers to relevant incidents that had not yet
11 occurred at the time of hearing and was thus not available.

12 **III. ARGUMENT**

13 **A. Standard of Review**

14 The role of the Appeals Board is limited in scope by Business and Professions Code Section
15 23084. The Appeals Board must uphold the Department’s decision if, considering the administrative
16 record as a whole, it is supported by substantial evidence. *Boreta Enterprises, Inc. v. Dept. of*
17 *Alcoholic Beverage Control*, 2 Cal. 3d 85, 94-95 (1970). The factual findings of the Department are
18 binding on the Appeals Board and all conflicts in the evidence must be resolved in favor of the
19 Department’s decision. *Harris v. Alcoholic Beverage Control Appeals Board*, 212 Cal. App. 2d 106
20 (1963). The Appeals Board cannot disregard or overturn a finding of fact by the Department merely
21 because a contrary finding would have been equally or more reasonable. *Kirby v. Alcoholic Beverage*
22 *Control Appeals Board*, 7 Cal. 3d 433, 436 (1972). The Appeals Board shall not interpose its
23 independent judgment on the evidence and must accept as conclusive the Department’s findings of
24 fact. *Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Appeals Board*, 118 Cal. App. 4th
25 1429, 1437 (2004). In addition, the Appeals Board shall not consider any new evidence that was not
26 previously before the Department. CAL. BUS. & PROF. CODE § 23083.

1 **B. Appellants' Grounds for Appeal are Meritless**

2 Appellants' grounds for appeal are meritless and their requests must be rejected. Appellants
3 raise the following concerns in their Opening Brief: 1) the Department's findings were not supported
4 by substantial evidence, and/or the Decision was not supported by the findings; and 2) evidence at
5 hearing was improperly excluded.

6 The questions to be considered by the Board on review are limited to those permitted by
7 statute. Review by the Board shall be limited to:

8 (a) Whether the department has proceeded without, or in excess of, its jurisdiction.

9 (b) Whether the department has proceeded in the manner required by law.

10 (c) Whether the decision is supported by the findings.

11 (d) Whether the findings are supported by substantial evidence in the light of the whole
12 record.

13 (e) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could
14 not have been produced or which was improperly excluded at the hearing before the
15 department.

16 (CAL. BUS. & PROF. CODE § 23084).

17 Despite a lengthy Opening Brief and box of additional evidence, appellants fail to satisfy the
18 requirements of CAL. BUS. & PROF. CODE § 23084. Instead, they merely attempt to re-litigate the
19 underlying case while presenting no evidence of legal error. Appellants present the exact same
20 arguments on appeal that they presented in hearing, asking the Board to reweigh the evidence and
21 come to a different conclusion. It is not within the Board's authority to do so. *See Boreta Enterprises,*
22 *Inc. v. Dept. of Alcoholic Beverage Control*, 2 Cal. 3d 85, 94-95 (1970); *Harris v. Alcoholic Beverage*
23 *Control Appeals Board*, 212 Cal. App. 2d 106 (1963); and *Kirby v. Alcoholic Beverage Control*
24 *Appeals Board*, 7 Cal. 3d 433, 436 (1972). Likewise, Appellants improperly seek to introduce new
25 evidence on appeal, or introduce evidence properly rejected by the lower court, a request that must
26 also be denied.

1 *i. The Issue of Quiet Enjoyment was Properly Decided*

2 Appellants claim that the issue of quiet enjoyment was not properly decided because a
3 neighbor, Lynne Hallett, testified that she has heard voices from the winery when she is on her patio.
4 (Opening Brief, pg. 15; HD 2/10/16, 20:23-21:5). Mrs. Hallett testified to hearing regular vineyard
5 noises, which should not be a surprise given that she lives on property zoned Agricultural Watershed,
6 a designation that allows for mixed residential and agricultural use, including winery operations.
7 (Decision, Finding of Fact No. 1.)

8 David and Lynne Hallett live about 600-1,000 feet from the Relic property line. (Decision,
9 Finding of Fact No. 9.) David Hallett is the same neighbor that entered a settlement agreement with
10 Relic whereby he agreed to the reduced amount of winery visitors. (Applicant's Exhibit B.)
11 Although he seeks to re-insert himself in this appeal through a Declaration, Mr. Hallett is no longer a
12 protestant in this matter. He withdrew his protest on the first day of hearing. (HD 7/16/15, 16:20-22.)

13 Appellants have failed to show that the issue of quiet enjoyment was not properly decided by
14 the lower court.

15 *ii. The Issue of Traffic Congestion was Properly Decided*

16 Appellants claim that the issue of traffic congestion was not properly decided because they
17 claim that the lower court failed to consider their traffic concerns and did not properly consider their
18 substantial evidence. Considering the fact that the lower court spent almost two full days listening to
19 Appellants' concerns about traffic on Soda Canyon Road, their argument is misplaced.

20 Bizarrely, Appellants testified throughout the hearing and throughout their Opening Brief
21 about the negative impact that vineyard workers have on traffic congestion (i.e. that the sheer number
22 of vineyard workers adds to the congestion and that vineyard workers as a group are dangerous
23 drivers). (Opening Brief pg. 7-9, 21). This information is irrelevant to the issuance of Relic's winery
24 license, in large part because Relic is a winery only, they do not have vineyards on the property.
25 (Decision, Finding of Fact No. 2; HD 02/11/17, 69:18-19.) As such, they do not employ vineyard
26 workers. Several of the Appellants on the other hand, including Mr. Arger's family, do have
27 vineyards on their neighboring properties, at which they employ vineyard workers. (HD 02/11/15,
28 95:3-12). In fact, Mr. Arger testified that his family has a 40-acre parcel at the top of the road, with

1 about 20 acres of planted vineyards. (HD 02/09/11, 90:7-14.) All traffic congestion related to the
2 daily coming and going of vineyard workers is attributed to those of other vineyard owners on the
3 road. To the extent that Relic’s operations may lead to increased traffic, it will be limited to the
4 handful of winery employees, the limited number of winery visitors permitted each day, and the
5 occasional grape delivery during winemaking season, which is expected to be minimal as Relic is a
6 small winery with limited production.

7 In weighing the traffic and road concerns, ALJ Sakamoto properly reasoned that it is not
8 within the ABC’s jurisdiction to decide these matters. He reasoned, “[w]hile the Department has
9 broad discretion in deciding upon issuance of a license, its scope of expertise is focused on alcoholic
10 beverages, and is much less equipped to reasonably address issues of road design, road construction,
11 road capacity, road routing, vehicle traffic patterns, and protected road usage. Rather, city and county
12 governments have more expertise in that area and are much better equipped than the Department. . . . It
13 is not sufficient to claim that if Applicant’s application is denied, there will be much less traffic on
14 [sic] Soda Canyon Road, so public welfare and morals were protected.” (Decision, Conclusion of
15 Law No. 5.) He went on to note that Relic went through a full CUP process and public hearing that
16 specifically addressed road use issues, and while the Department might feel compelled to weigh in on
17 a situation where local approvals were not required or in an extreme case where the Department was
18 compelled to take action contrary to the local agencies’ assessments, this was not such a case. (Id.)
19 Here, the issue was thoroughly vetted and decided by the local authorities. The fact that Appellants
20 disagree with this finding does not present sufficient grounds to reverse on appeal.

21 *iii. The Issue of Public Safety was Properly Decided*

22 Appellants also argue that the issue of public safety was not properly decided because they
23 claim that the lower court did not properly consider fire concerns. (Opening Brief pg. 41-42.) In fact,
24 ALJ Sakamoto noted that during the course of the license investigation the licensing representative
25 “specifically checked twice with the State Fire Marshall/Napa County Fire Department, and each
26 time was informed that there were no fire related concerns over Applicant’s premises.” (Decision,
27 Conclusion of Law No. 7.) As ALJ Sakamoto correctly noted, this issue was also considered at the
28

1 CUP stage, where it was similarly determined that this winery would not present additional fire
2 concerns. (Id.)

3 In the protest hearing and in their Opening Brief, Appellants attempt to draw a correlation
4 between Relic's limited winery use to a significant increase in fire danger. As ALJ Sakamoto aptly
5 surmised, "there appears no evidence that Applicant's employees or patrons would pose any greater
6 threat of causing an uncontrolled wildfire than anyone else that resides or works in the area. If
7 Protestant's [sic] theory were controlling, there would never be any development of any kind in any
8 area." (Decision, Conclusion of Law No. 7.)

9 Appellants argument that if Relic is granted a winery license, the fire danger on Soda Canyon
10 Road will increase dramatically is unsubstantiated. As ALJ Sakamoto correctly described, it is
11 unclear how or why Relic's limited operations would lead to increased fire danger (Decision,
12 Conclusion of Law No. 7.) It is clear from the record that Soda Canyon Road's residents actually
13 experience added fire safety because of Relic. As part of their permitting process, Relic installed a
14 fire hydrant and water tanks that collectively store 12,000 gallons of water on their property. (HD
15 02/11/16, 56:02-57:18). These fire safety devices not only work as a measure to combat any fires that
16 may occur on or around Relic's property, they also serve the neighboring residents. (Id.)

17 The fact that Appellants disagree with this finding does not present sufficient grounds to
18 reverse on appeal.

19 *iv. The Issue of Zoning was Properly Decided*

20 Relic winery is located on Soda Canyon Road; the winery parcel and surrounding residences
21 are zoned Agricultural Watershed, a designation which allows for mixed residential and agricultural
22 use, including winery operations. (Decision, Finding of Fact No. 1.) As of the last hearing date, there
23 were ten active licensed wineries on Soda Canyon Road, six of which are permitted to conduct
24 tastings. (HD 02/11/16, 8:20-10:2). Appellants make it seem as though this a remote location with no
25 commercial activity, when in fact Relic is just one of many wineries on the road. Zoning was
26 approved by the Board of Supervisors through Relic's CUP, as such it does not need to be re-
27 determined by the ABC or this Board.

28

1 **C. Appellants' Request to Introduce New Evidence Must be Denied**

2 Appellants seek to introduce a great deal of new information that was either not previously
3 introduced or which was properly rejected by the lower court. This includes a significant amount of
4 additional evidence regarding the quality of the road, traffic, and fires. The bulk of their five-day
5 hearing was devoted to these matters. Appellants argue that evidence was improperly excluded at
6 hearing, but to the contrary, ALJ Sakamoto heard ample testimony and gave Appellants broad
7 leeway, admitting a great deal of cumulative and/or irrelevant evidence (over Respondents'
8 objections) while agreeing to give it the weight it deserved. That evidence is all part of the record,
9 this Board can review countless materials related to roads and fires. Additional evidence that
10 describes the same issues are not needed and are improper on appeal, as such, this Board should not
11 consider any of this evidence on appeal. CAL. BUS. & PROF. CODE § 23083. Moreover, when ALJ
12 Sakamoto chose to exclude evidence, it was because it had become incredibly cumulative or was
13 deemed wholly irrelevant. (HD 02/11/16, 29:22-31:11).

14 Likewise, Appellants ask this Board to introduce and consider a nearly 20-year-old Appeals
15 Board decision, despite the fact that ALJ Sakamoto denied their request for judicial notice of the case
16 at hearing. (HD 02/09/16, 164:20 – 170:02.) This case continues to be irrelevant to the circumstances
17 of this license application and should not be reviewed or introduced by this Board. As Respondent
18 argued at the hearing, judicial notice is improper where the information sought to be introduced is not
19 relevant. (HD 02/09/16, 166:17-24). As argued at the hearing, a court may take judicial notice only of
20 relevant material. (*American Cemwood Corp. v. American Home Assurance Co.* 87 Cal.App.4th
21 431(2001) (review denied). Moreover, despite Appellants' claims that this old case is highly relevant
22 as to why a winery on Soda Canyon Road should not be permitted to have a tasting room, the
23 applicants in that case never even sought on-premises sales or tastings. Despite Appellants' claims
24 that this stale case is on point, it is not. ALJ Sakamoto recognized that fact when he properly denied
25 Appellants' request for judicial notice.

26 **IV. CONCLUSION**


27 CAL. BUS. & PROF. CODE § 23084 imposes a strict standard that requires the Board to uphold
28 the Decision of the Department unless it is not supported by the record. Appellants failed to meet that

1 burden, instead they simply reiterate arguments made at the protest hearing. Following a lengthy
2 hearing process, ALJ Sakamoto made a full and fair analysis of the relevant evidence and Appellants'
3 protests regarding the proposed license. Simply disagreeing with the Decision does not constitute
4 reversible error.

5 For the foregoing reasons, Respondent respectfully requests the Board affirm the
6 Department's Decision to grant Relic Wine Cellars, LLC a Type 02 winegrower's license.

7
8
9 Dated: September 18, 2017

Strike & Techel
Attorneys for Respondent
Relic Wine Cellars, LLC

10
11 
12 Melani Johns

**PROOF OF SERVICE BY FAX & CERTIFIED MAIL
(CCP §§ 1013(a), 2015.5)**

I, the undersigned, hereby certify as follows:

I am a citizen of the United States and employed in the County of San Francisco, California. I am over the age of eighteen years and I am not a party to the above-captioned action. My business address is 556 Commercial Street, San Francisco, CA 94111.

On the date stated below, I served:

RESPONDENT RELIC WINE CELLAR, LLC'S REPLY BRIEF IN RESPONSE TO APPELLANT'S APPEAL OF DEPARTMENT'S DECISION DENYING PROTEST

By U.S. Certified Mail, by depositing true copies thereof with the United States Postal Service at San Francisco, California, enclosed in sealed envelopes with first class certified mail postage thereon fully prepaid, addressed as follows:

Alcoholic Beverage Control Appeals Board (Original and 3 copies)
300 Capitol Mall, Suite 1245
Sacramento, California 95814
Facsimile: (916) 323-2760

Jacob Rambo, Chief Counsel
Sean Klein, Esq.
Dept. of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834-2917

David R. Heitzman
23 Rockrose Court
Napa, CA 94558

Relic Wine Cellars, LLC P.O.
Box 327
St. Helena, CA
94574-0327

Lisa Hirayama
16 Dogwood Court
Napa, CA 94558

Yeoryios C. Apallas, Esq.
4054 Silverado Trail
Napa, CA 94558

William Hocker
2460 Soda Canyon Road
Napa, CA 94558

Lawrence Carr
16 Dogwood Court
Napa, CA 94558

Meah Muzquiz
3354 Soda Canyon Road
Napa, CA 94558

Lynne M. Hallett
2444 Soda Canyon Road
Napa, CA 94558

Anne Palotas
3354 Soda Canyon Road
Napa, CA 94558

Alan Shepp
3580 Soda Canyon Road
Napa, CA 94558

1 Jim Wilson
2 5000 Monticello Road
3 Napa, CA, 94558

Dianne Shepp
3580 Soda Canyon Road
Napa, CA 94558

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

6 Dated: September 18, 2017

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Maria Freitas