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**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:

CASE NO: AB-9587

LAWRENCE CARR, ET AL,

Protestants/Appellants

File: 02-548261
Reg: 15082334

vs.

**SUPPLEMENTAL MOTION TO
SUPPLEMENT THE RECORD WITH
ADDITIONAL NEWLY DISCOVERED
EVIDENCE**

RELIC WINE CELLARS, LLC,
dba Relic Wine Cellars and
DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,

Hearing Date: December 7, 2017

Applicant(s) and/or Respondent(s)

TO THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD ("Appeals Board"), THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (the "Department"), RESPONDENT RELIC WINE CELLARS ("Applicant" or "Respondent"), AND ITS ATTORNEYS OF RECORD:

Protestants/Appellants LAWRENCE CARR, *et al.* ("Appellants"), by and through its counsel of record, Robertson, Johnson, Miller & Williamson, and Apallas Law Group, hereby file this Supplemental Motion to Supplement the Record with Newly Discovered Evidence ("Supplemental Motion"). This Supplemental Motion is based upon the declaration of Cynthia

1 Grupp, the declaration of Shelle Wolfe, and the supplemental declaration of Anthony G. Arger,
2 including supporting exhibits, in support of this Supplemental Motion (collectively
3 “Declarations”); all pleadings and papers on file in the above-titled action; and any additional
4 evidence, arguments, or authorities that the Appeals Board may choose to hear.

5 Pursuant to California Business and Professions Code section 23084(e), the Appeals
6 Board may consider relevant evidence, which in the exercise of reasonable discretion, could not
7 have been produced. Under the California Code of Regulations, Title IV, Division 1.1, section
8 198, when a party requests a remand to the Department due to relevant evidence that could not
9 have been produced at the hearing before the Department with the exercise of reasonable
10 diligence, the requesting party must set forth in an affidavit:

11 (a) The substance of the newly-discovered evidence;

12 (b) Its relevancy and that part of the record to which it pertains;

13 (c) Names of witnesses to be produced and their expected testimony;

14 (d) Nature of any exhibits to be produced;

15 (e) A detailed statement of the reasons why such evidence could not, with due diligence,
16 have been discovered and produced at the hearing before the department.

17 Notably, the California Supreme Court has authorized the admission of evidence relating
18 to facts occurring *after the conclusion of a trial* where the moving party can “make a strong
19 case” for its inclusion. *Nebelung v. Norman*, 14 Cal. 2d 647, 655, 96 P.2d 327, 331 (1939).


20 As more fully outlined in the Declarations, the additional newly discovered evidence
21 (“Additional Newly Discovered Evidence”) pertaining to the Atlas Fire that began on Sunday,
22 October 8, 2017, and the October 25, 2017 rollover accident at the 3.9 mile-mark of Soda
23 Canyon Road just below the entrance to Relic, verify with tragic poignancy virtually all of the
24 public safety related concerns pertaining to fire and accidents on Soda Canyon Road raised by
25 Appellants during the hearing before the Department. In terms of damage from the Atlas Fire,
26 ***260 buildings on Soda Canyon Road or its offshoots were damaged or destroyed.*** More
27 specifically, ***118 of the 163 residences on Soda Canyon or its offshoots were completely***
28 ***destroyed***, including the home of Appellant Lynne Hallett, and another ***16 were damaged***, for a

1 total of *134 residences that were damaged or completely destroyed*. As a percentage, that
2 means that *72% (118) of the residences on Soda Canyon Road or its offshoots were completely*
3 *destroyed in the Atlas Fire*, and *82% (134) of the 163 residences were damaged or destroyed*.
4 Critically, the vast majority of the property losses occurred in Soda Canyon at or below the 4-
5 mile mark on Soda Canyon where Respondent's winery is located. Moreover, the fire began at
6 9:52pm on Sunday, October 8, 2017 and was *moving at a rate of 100 yards every three seconds,*
7 *which means that the fire was moving at ~68 mph*. As it was, two individuals lost their lives on
8 Soda Canyon Road that night. Had the fire began even just a few hours earlier, during the time
9 Respondent seeks to introduce some 4,500 members of the public to taste wine at its winery 4.1
10 miles up Soda Canyon, many more lives could have been lost. Notably, there have been
11 *numerous major fires on and around Soda Canyon Road dating back to the 1950s*, with the
12 three largest occurring in 1960, 1981, and 2017. Critically, *all three of these major fires burned*
13 *right through Soda Canyon where Respondent's property is located*. The Department *cannot*
14 *ignore the reality of the extreme fire danger and existing public safety concerns relating to*
15 *traffic and accidents that does, has, and always will exist in Soda Canyon*.

16 Both of these events are *exactly* the type of disastrous situations that can, do, and will
17 continue to occur on Soda Canyon Road, and which Appellants practically begged the
18 Department to consider, but were completely and inappropriately ignored. As such, review and
19 consideration by the Appeals Board of the admission and inclusion of evidence pertaining to
20 these two recent events is critical to the Department's consideration in the event of a remand.

21 In accordance with the applicable California laws outlined above, Appellants more fully
22 set forth all of the reasons and "make a strong case" as to why this Additional Newly Discovered
23 Evidence should be admitted in the instant matter in the Declarations. Based upon the arguments
24 set forth there and herein, Appellants respectfully request that the Appeals Board permit the
25 sought after Additional Newly Discovered Evidence to supplement the existing record on appeal.

26 Dated this 4th day of December, 2017.

27 By: 
28 Anthony G. Arger, Esq.
Appellant and Attorney for Appellants

PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City of Reno, Washoe County, and my business address is 50 W. Liberty Street, Suite 600, Reno, NV 89501. On December 4, 2017, I caused to be served the attached document: **SUPPLEMENTAL MOTION TO SUPPLEMENT THE RECORD WITH ADDITIONAL NEWLY DISCOVERED EVIDENCE** on the following parties and/or their attorney(s) of record:

Alcoholic Beverage Control Appeals Board	David R. Heitzman
1325 J. Street, Suite 1560	23 Rockrose Court
Sacramento, CA 95814	Napa, CA 94558
<i>Via Overnight Mail & Electronic Mail</i>	<i>Via Electronic Mail</i>

Jacob Rambo, Chief Counsel	Lisa Hirayama
Sean Klein, Esq.	16 Dogwood Court
Dept. Of Alcoholic Beverage Control	Napa, CA 94558
3927 Lennane Drive, Suite 100	<i>Via Electronic Mail</i>

Sacramento, CA 95834-2917	William Hocker
<i>Via Overnight Mail & Electronic Mail</i>	2460 Soda Canyon Road
Relic Wine Cellars, LLC	Napa, CA 94558
c/o Strike & Techel	<i>Via Electronic Mail</i>

Alcoholic Beverage Law	Meah Muzquiz
556 Commercial Street	3354 Soda Canyon road
San Francisco, CA 94111	Napa, CA 94558
<i>Via Overnight Mail & Electronic Mail</i>	<i>Via Electronic Mail</i>

Yeoryios C. Apallas, Esq.	Anne Palotas
4054 Silverado Trail	3354 Soda Canyon Road
Napa, CA 94558	Napa, CA 94558
<i>Via Electronic Mail</i>	<i>Via Electronic Mail</i>

Lawrence Carr	Alan Shepp
16 Dogwood Court	3580 Soda Canyon Road
Napa, CA 94558	Napa, CA 94558
<i>Via Electronic Mail</i>	<i>Via Electronic Mail</i>

Lynne M. Hallett	Diane Shepp
2444 Soda Canyon Road	3580 Soda Canyon Road
Napa, CA 94558	Napa, CA 94558
<i>Via Electronic Mail</i>	<i>Via Electronic Mail</i>

Jim Wilson
5000 Monticello Road
Napa, CA 94558
<i>Via Electronic Mail</i>

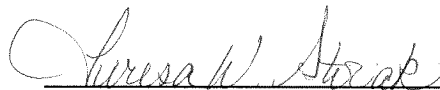
1 ☐ **BY FIRST CLASS MAIL:** I am readily familiar with my employer's practice for the
2 collection and processing of correspondence for mailing with the U.S. Postal Service. In
3 the ordinary course of business, correspondence would be deposited with the U.S. Postal
4 Service on the day on which it is collected. On the date written above, following
5 ordinary business practices, I placed for collection and mailing at the offices of
6 Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno,
7 Nevada, 89501, a copy of the attached document in a sealed envelope, with postage fully
8 prepaid, addressed as shown on the service list. I am aware that on motion of the party
9 served, service is presumed invalid if the postal cancellation date or postage meter date is
10 more than one day after the date of deposit for mailing contained in this declaration.

11 ☐ **BY FACSIMILE:** On the date written above, I caused a copy of the attached document
12 to be transmitted to a fax machine maintained by the person on whom it is served at the
13 fax number shown on the service list. That transmission was reported as complete and
14 without error and a transmission report was properly issued by the transmitting fax
15 machine.

16 ☒ **BY OVERNIGHT MAIL:** I am readily familiar with my employer's practice for the
17 collection and processing of correspondence for overnight delivery. In the ordinary
18 course of business, correspondence would be deposited in a box or other facility regularly
19 maintained by the express service carrier or delivered to it by the carrier's authorized
20 courier on the day on which it is collected. On the date written above, following ordinary
21 business practices, I placed for collection and overnight delivery at the offices of
22 Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno,
23 Nevada, 89501, a copy of the attached document in a sealed envelope, with delivery fees
24 prepaid or provided for, addressed as shown on the service list.

25 ☒ **BY ELECTRONIC MAIL:** On the date written above, I caused a copy of the attached
26 document to be transmitted to an e-mail address maintained by the person on whom it is
27 served at the e-mail address shown on the service list. That transmission was reported as
28 complete and without error and a transmission receipt was properly issued by the
transmitting computer.

I declare under penalty of perjury under the laws of the States of Nevada and California
that the foregoing is true and correct and that this document was executed on December 4, 2017,
at Reno, Nevada.



an Employee of Robertson, Johnson, Miller & Williamson

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Attorneys for Protestants/Appellants, Lawrence Carr, et al.

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:

LAWRENCE CARR, ET AL,

Protestants/Appellants

vs.

RELIC WINE CELLARS, LLC,
dba Relic Wine Cellars and
DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,

Applicant(s) and/or Respondent(s)

CASE NO: AB-9587

File: 02-548261

Reg: 15082334

**DECLARATION OF CYNTHIA
GRUPP**

Hearing Date: December 7, 2017

I, Cynthia Grupp, declare as follows:

1. I am over the age of 18, and not a party within this action. However, I testified as a witness in this matter on February 10, 2016, attended all hearings in which testimony was taken, and am thus aware of the facts and circumstances surrounding this matter.

2. Except as otherwise qualified below, I have personal knowledge of the facts set forth in this declaration, and if called today as a witness, I could and would testify competently as to such matters set forth herein.

3. I am a resident of Soda Canyon Road, and have lived in my home located at 2367 Soda Canyon Road, Napa, CA 94558 since approximately 1973.

4. The driveway entrance to my home is on the opposite side of Soda Canyon Road directly across from the volunteer fire station, and approximately 50-100 feet south of the driveway entrance to Relic Wine Cellars.


5. As I testified at the hearing, *see February 10, 2016 Transcript* at 120:3-121:24, the location of my property, similar to Relic, is approximately 0.2 miles past the 90 degree, hairpin turn at approximately the 3.9 mile mark of Soda Canyon Road. There have been numerous vehicle accidents involving both cars and trucks over the years at that curve, which does not have any guardrails or protection to prevent vehicles from going off the road, down the embankment, and into Soda Creek. *See id.*

6. On October 25, 2017, there was another, very serious rollover accident that occurred at this turn.

7. Attached as **Exhibit 8** to the Supplemental Declaration of Anthony Arger ("Arger Supp. Dec.") are several images of the October 25, 2017 accident that I either photographed or was in the vicinity when the photographs were taken, and can thus verify the date, location, and authenticity of same. The images include the aftermath of the accident, as well as the traffic backup and emergency vehicles that responded to the incident.

8. As a direct result of the rollover accident, Soda Canyon Road was closed for well over an hour, preventing all ingress and egress.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3 day of December, 2017 at Napa, California.


Cynthia Grupp

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10
11 **BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

12
13 **IN THE MATTER OF THE PROTEST OF:**

CASE NO: AB-9587

14 LAWRENCE CARR, ET AL,

File: 02-548261

Reg: 15082334

15 Protestants/Appellants

DECLARATION OF SHELLE WOLFE

16 vs.

Hearing Date: December 7, 2017

17
18 RELIC WINE CELLARS, LLC,
dba Relic Wine Cellars and
19 DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,

20
21 Applicant(s) and/or Respondent(s)

22
23 I, Shelle Wolfe, declare as follows:

- 24 1. I am over the age of 18, and not a party within this action.
- 25 2. Except as otherwise qualified below, I have personal knowledge of the facts set
- 26 forth in this declaration, and if called today as a witness, I could and would testify competently
- 27 as to such matters set forth herein.
- 28

3. I am a resident of Soda Canyon Road, and have lived in my home located at 3240 Soda Canyon Road, Napa, CA 94558 since approximately July 2015. My home is located at approximately the 6.2 mile-mark of Soda Canyon Road, near the very end of the dead-end road.

4. I was at home on the night of Sunday, October 8, 2017 when the Atlas Fire began.

5. Attached as **Exhibit 1** to the Supplemental Declaration of Anthony Arger (“Arger Supp. Dec.”) are several images of the Atlas Fire that I either photographed or was in the vicinity when the photographs were taken on the night of Sunday, October 8, 2017, or early in the morning of Monday, October 9, 2017, and can thus verify the date, location, and authenticity of same. The terrifying images include photographs taken from approximately the 4.9 mile-mark of Soda Canyon Road depicting Soda Canyon completely consumed by fire around 10:30 p.m. when I was trying to escape down the road on Sunday night, and additional photographs from early Monday morning of the Atlas Fire burning homes or properties on upper Soda Canyon near the 5.2 mile-mark of Soda Canyon Road (2882 Soda Canyon Road).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3 day of December, 2017 at Napa, California.

Shelle Wolfe

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9 *Attorneys for Protestants/Appellants, Lawrence Carr, et al.*

10
11 **BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**
12 **OF THE STATE OF CALIFORNIA**

13 LAWRENCE CARR, ET AL,

14 Protestants/Appellants

15 vs.

16 RELIC WINE CELLARS, LLC,
17 dba Relic Wine Cellars and
18 DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,

19 Applicant(s) and/or Respondent(s)
20

CASE NO: AB-9587

File: 02-548261
Reg: 15082334

**SUPPLEMENTAL DECLARATION OF
ANTHONY G. ARGER**

Hearing Date: December 7, 2017

21 I, Anthony G. Arger, declare as follows:

22 1. I am both a Protestant/Appellant and a counsel of record for
23 Protestants/Appellants Lawrence Carr, *et. al.* ("Appellants") in this matter. Except as otherwise
24 qualified below, I have personal knowledge of the facts set forth in this declaration, and if called
25 today as a witness, I could and would testify competently as to such matters set forth herein.

26 2. Pursuant to the California Code of Regulations, Title IV, Division 1.1, section
27 198, I provide this declaration to set forth the reasons why additional, newly discovered, relevant
28 evidence, even with the exercise reasonable diligence, could not have been produced at the

1 hearing before the Department of Alcoholic Beverage Control ("Department") in the above-
2 captioned matter.

3 3. The substance of the additional, newly discovered evidence includes (1) select
4 photographs, maps, and incident reports from the California Department of Forestry and Fire
5 ("CalFire"), and a video relating to the Atlas Fire that began on October 8, 2017, burned 51,625
6 acres, including the vast majority of Soda Canyon, and damaged or completely destroyed 260
7 homes and buildings on Soda Canyon Road or roads accessed by it; and (2) select photographs
8 and an alert from the Napa County Sheriff's Department ("Sheriff's Department") pertaining to a
9 rollover accident that occurred at approximately the 3.9 mile-mark of Soda Canyon Road on
10 October 25, 2017. All of this information is collectively referred to as "Additional Newly
11 Discovered Evidence."

12 4. More specifically, attached hereto as **Exhibit 1** are four photographs of the Atlas
13 Fire on Soda Canyon Road taken by Soda Canyon resident Shelle Wolfe during the night of
14 October 8, 2017, or early in the morning on October 9, 2017. Her declaration verifying the date,
15 location, and authenticity of these photographs is included herewith.

16 5. Attached hereto as **Exhibit 2** is a series of photographs pertaining to the Atlas
17 Fire on Soda Canyon Road that were taken in the spring of 2017, in or around the time of the
18 Atlas Fire in October 2017, and after the Atlas Fire in November 2017. These photographs show
19 what Soda Canyon looked like approximately six (6) months before the fire as compared to what
20 it looks like after. Included are before and after photographs of the home of Appellant Lynne
21 Hallett, whose home was completely destroyed by the fire. I either took these photographs, was
22 present when they were taken, or know and am familiar with the exact location of where said
23 photographs were taken, and can thus verify their date, location, and/or authenticity.

24 6. Attached hereto as **Exhibit 3** are (1) two maps of the Atlas Fire created by expert
25 witness Dr. Amber Manfree ("Manfree maps"), (2) a series of map images of the Atlas Fire
26 created and/or maintained by CalFire that are publicly available online (<http://calfire-forestry.maps.arcgis.com/apps/webappviewer/index.html?id=58dc77306bf448c6ac5f756af51f3ae5>), and (3) a set of maps included in a report titled *Atlas Incident Southern LNU Complex*
27
28

1 *CALNU 10046 Damage Inspection Report* (“Atlas Damage Inspection Report”) dated October
2 25, 2017. The Manfree maps and online map images depict the location of Relic Wine Cellars in
3 the belly of the Atlas Fire. Included in the Atlas Damage Inspection Report is a map titled “Fire
4 History Map,” showing fires in and around the Soda Canyon Road/Atlas Peak area dating back
5 to the 1950s. Dr. Manfree created a similar map that more clearly demonstrates where the
6 historical fires occurred. Also included in the Atlas Damage Inspection Report is a map titled
7 “Fire Progression Map,” depicting how quickly the Atlas Fire spread, and shows that during the
8 first day of the fire, from late on October 8, 2017 to October 9, 2017, the fire burned 22,110
9 acres, including the entirety of lower Soda Canyon Road, and by October 10, 2017, the fire
10 burned another 20,070 acres for a total of 42,181 acres burned in just two days. This map also
11 shows the total number of acres – 51,625 – burned in the Atlas Fire. Finally, there is a series of
12 three (3) maps in the Atlas Damage Inspection Report showing the damage to structures in Napa
13 County, including the destruction of hundreds of commercial and residential buildings on Soda
14 Canyon Road, or roads accessed by Soda Canyon Road such as Loma Vista Drive, Chimney
15 Rock Road, Ridge Drive, and Soda Springs Road (collectively, “offshoots”). Dr. Manfree
16 created a similar map, based upon Napa County records, which identifies the total number of
17 structures on Soda Canyon Road – **260** – damaged or destroyed in the fire, composed as follows:

18 Residences: 134

19 Outbuildings: 122

20 Commercial buildings: 4

21 **Total Soda Canyon Road Buildings Damaged/Destroyed: 260**

22 7. Attached hereto as **Exhibit 4** is a CalFire summary of all the buildings damaged
23 or destroyed in the Atlas Fire, which is also contained in the Atlas Damage Inspection Report.

24 8. Attached hereto as **Exhibit 5** is a CalFire incident fact sheet update pertaining to
25 the Atlas Fire, the incident name for which is referred to as the “Southern LNU Complex.”

26 9. Attached hereto as **Exhibit 6** is a news article from the Napa Valley Register
27 describing the two individuals – Sally Lewis and Teresa Santos – who perished in the home of
28

1 Ms. Lewis on Soda Canyon Road during the Atlas Fire on the night of Sunday, October 8, 2017,
2 or early in the morning of Monday, October 9, 2017.

3 10. Attached hereto as **Exhibit 7** is an alert from the Sheriff's Department regarding
4 the accident on Soda Canyon Road at approximately mile 3.9 that occurred on October 25, 2017.

5 11. Attached hereto as **Exhibit 8** are photographs from the rollover accident on Soda
6 Canyon Road at approximately mile 3.9 that occurred on October 25, 2017. Ms. Cynthia Grupp,
7 a resident of Soda Canyon and witness during these proceedings either took these photos or was
8 in the vicinity when the photos were taken. Her declaration verifying the date, location, and
9 authenticity of these photographs is included herewith.

10 12. Included herewith as **Exhibit 9** is a compact disc containing a video I filmed
11 around 10:30am on Tuesday, October 10, 2017. The video is also available for viewing at
12 <https://www.youtube.com/watch?v=EgdCkHOILfI>. Although the road was closed to all traffic
13 (and was for more than a week after the fire began), I was able to secure a ride with a deputy
14 sheriff to my family's property located at 3030 Soda Canyon Road on Tuesday morning of the
15 fire. The video begins just past the intersection with Loma Vista Drive (approximately 1.5 miles
16 up Soda Canyon) and continues to the driveway of 2882 Soda Canyon Road (approximately 5.2
17 miles up Soda Canyon). I would like to apologize in advance for some profane language that
18 may be audible in the video, as well as for some grotesque images depicted, such as burned cows
19 on the side of the road. All I can say is that seeing the road for the first time after Sunday night
20 October 8, 2017, and while the fire was still very active in the area, was simply shocking,
21 particularly because at the time of the video I did not have confirmation that my family's home
22 and property survived the fire.

23 13. This Additional Newly Discovered Evidence is highly relevant because the two
24 events to which it relates verifies with tragic poignancy *virtually all* of Appellants previously
25 articulated concerns with regard to the public welfare and morals due to the dead-end nature of
26 Soda Canyon Road. This is particularly true for the Atlas Fire.

27 14. As is clearly outlined in Appellants' Opening and Reply briefs, fire was a *major*
28 concern at the hearing before the Department, including past examples of being trapped on the

1 dead-end Soda Canyon Road specifically because of fires. *See February 10, 2016 Transcript*
2 (*"Feb. 10 Transcript"*) at p. 43:9-15. In fact, Ms. Cynthia Grupp, a retired member of the Soda
3 Canyon Volunteer Fire Department, directly addressed how fires behave in Soda Canyon and
4 how devastating they can be specifically because of the geography of Soda Canyon and local
5 wind conditions that can gust up to 60 mph and make for extremely hazardous fire conditions
6 ***right at the location of her home, the Soda Canyon Volunteer Fire Station, and the applicant,***
7 ***Relic Wine Cellars.*** *See Feb. 10 Transcript* at pp. 128:9-137:14. Ms. Grupp even cited to P-
8 Exhibit VI H8, the Soda Canyon/Monticello Pre-Attack Fire Plan ("Pre-Attack Fire Plan"),
9 which maintains that "[f]ire history fuels topography and urban interface issues indicate the
10 ***potential for a large, damaging fire in Soda Canyon/Monticello area.***" *Id.* at 137:2-5. As part
11 of his offer of proof for P-Exhibit VI H8, attorney Yeoryios Apallas for Appellants stated that
12 "this is a very, very dangerous, highly explosive fire situation, where Relic and Ms. Grupp's
13 residence is, and is cause for concern about introducing an additional 4,500 tourists through
14 there. . . ." *Id.* at 133:4-8. Incredibly, the circumstances described by Ms. Grupp during the
15 hearing are ***exactly what occurred on the night of October 8, 2017 when the Atlas Fire began.***
16 There were 60-70 mph winds coupled with extremely warm and dry conditions that are believed
17 to have knocked power lines over, which then started multiple fires in Napa and Sonoma
18 Counties, including on Atlas Peak/Soda Canyon Road. The Wall Street Journal reported that ***the***
19 ***fire was moving at a rate of 100 yards every three seconds, which means that the fire was***
20 ***moving at 68 mph on the night it began,*** *see* Sara Randazzo, Erin Ailworth, Ian Lovitt, *Wildfire*
21 *Victims Had Only Seconds to Make Choices*, Wall St. J., Oct. 16, 2017, at A1, A12, and has been
22 described by witness and resident of Soda Canyon Glenn Schreuder as a "***tornado of fire.***" This
23 tornado of fire on Soda Canyon burned the ***entire bottom portion of Soda Canyon Road – that***
24 ***is, the first five miles of the 6.75-mile Soda Canyon Road – in a matter of hours.***

25 15. As shown in the "Fire Progression Map" included in **Exhibit 3** attached hereto,
26 the Atlas Fire burned 22,110 acres, including the entirety of lower Soda Canyon Road in less
27 than one day – from late on October 8, 2017 to October 9, 2017 – and by October 10, 2017, the
28 fire burned another 20,070 acres for a total of 42,181 acres burned in just two days. On the night

1 of the fire, residents, such as Ms. Grupp, and Mr. and Mrs. Hallett had **zero warning** and had less
2 than 10 minutes to evacuate their homes. On their way out, a tree was blocking the entire road
3 near the intersection with Loma Vista Drive, and caused the backup of approximately 15-20 cars.
4 By the time the tree was removed some minutes later by two trucks with tow ropes that
5 fortunately happened to be on the road, the flames were within 100 feet of the cars, and the cars
6 (and occupants) barely escaped with their lives. Tragically, two individuals – Sally Lewis and
7 Teresa Santos – did not escape and were taken by the fire in the Soda Canyon home of Sally
8 Lewis, which is located **below Relic Wine Cellars**. See **Exhibit 6**. Other residents, such as Mr.
9 Glenn Schreuder, who live above Respondent's location, tried to escape down the road, but were
10 trapped by the flames, see **Exhibit 1**, and had to be evacuated by helicopter from Antica Winery
11 at the end of Soda Canyon Road in 60+ mph crosswinds.

12 16. The exhibits attached hereto pertaining to the Atlas Fire paint a picture of how
13 devastating the fire truly was, and serve as concrete evidence that the Department **cannot ignore**
14 **the reality of the extreme fire danger that does, has, and always will exist in Soda Canyon**. As
15 demonstrated in P-Exhibit IV B, there are (or were) 163 residences on Soda Canyon Road and its
16 offshoots. According to Dr. Manfree's Damage Assessment map, which is based upon Napa
17 County records, **118 of those residences were completely destroyed**, and another **16 were**
18 **damaged** for a total of **134 residences that were damaged or completely destroyed**. As a
19 percentage, that means that **72% (118) of the residences on Soda Canyon Road or its offshoots**
20 **completely destroyed in the Atlas Fire**, and **82% (134) of the 163 residences were damaged or**
21 **destroyed**. Tragically, the home of Appellant Lynne Hallett, whose property is located directly
22 above Respondent's, was completely destroyed in the fire. See **Exhibit 2**.

23 17. Importantly, the Atlas Fire is not the first, and will certainly not be the last major
24 fire to occur on Soda Canyon Road. As demonstrated in the Manfree map titled "Soda Canyon
25 Road Regional Fires," and in the CalFire Fire History Map contained in **Exhibit 3** attached
26 hereto, there have been **numerous major fires on and around Soda Canyon Road dating back**
27 **to the 1950s**, with the three largest occurring in 1960, 1981, and 2017. Critically, **all three of**
28 **these major fires burned right through Soda CANYON where Respondent's property is**

1 located. See **Exhibit 3**. These fire dangers are not going to subside. The geography of Soda
2 **CANYON** – readily apparent in Dr. Manfree’s Damage Assessment map and all of CalFires
3 maps contained in **Exhibit 3** – is never going to change; the underbrush and forest will grow
4 back, and in another 20-30 years, there will be another significant load of fuel in Soda Canyon
5 that will be primed to burn. That is exactly what happened between 1960 and 1981, and again
6 between 1981 and 2017, and *is the reason CalFire created the Pre-Attack Fire Plan* specifically
7 for the Atlas Peak/Soda Canyon/Monticello areas. If Respondent is issued a Department license
8 in its current form, *the potential for more injury and loss of life to members of the public will*
9 *only increase because there will be some 4,500 more visitors encouraged to drive up the dead-*
10 *end road to a winery located in a “Very High Fire Hazard Severity Zone,” see P-Exhibit IV G,*
11 *drink alcohol, and then drive back down the road on an annual basis.*

12 18. As much as the Department seeks to avoid any recognition or responsibility for
13 public welfare concerns relating to fire,¹ it simply cannot be allowed to do so any longer, at least
14 not with regard to this license sought on Soda Canyon Road. Every minute, and in fact every
15 single second, was the difference between life and death on the night of Sunday, October 8,
16 2017. See Sara Randazzo, Erin Ailworth, Ian Lovitt, *Wildfire Victims Had Only Seconds to*
17 *Make Choices*, Wall St. J., Oct. 16, 2017, at A1, A12. As it was, a tree came down across Soda
18 Canyon Road near the intersection with Loma Vista Drive (approximately 1.5 miles up Soda
19 Canyon) and the 15-20 cars filled with people, their pets, and any possessions they could grab
20 barely escaped the fire. They were extremely fortunate that two trucks with tow ropes (but no
21 chain saws) were able to move the tree just enough so that the cars could dash around the tree
22 and get out. According to CalFire, the Atlas Fire began at 9:52pm, see **Exhibit 5**. Had this fire
23 occurred even just a few hours earlier, at 5 or 6pm, which it easily could have because the high
24

25 ¹ See *July 15 Transcript* at pp. 20, 22-23, 28; *Feb. 9 Transcript* at pp. 18, 21-22, 33-34, 53, 65-66, 74, 108, 113, 115,
26 128-29, 133, 138, 140-41, 143-44, 151, 160, 162-63, 166-68, 171, 180, 182, 189-90, 192-93; *Feb. 10 Transcript* at
27 pp. 33-34, 37, 41-42, 45, 49, 60, 66, 109, 116, 125-26, 129-30, 134, 141, 143, 200-01, 203, 268; *Feb. 11 Transcript*
28 at pp. 19, 22, 32-33, 73 (numerous examples of the Applicant arguing for the exclusion of evidence relating to
alcohol consumption, fires, traffic, and accidents occurring on Soda Canyon Road on relevance grounds because it
was outside of the Department’s jurisdiction and/or did not take place directly at the Applicant’s premises, after
which the Department concurred with the Applicant’s objections); see also *Decision* at 8, ¶ 6; *Feb. 10 Transcript* at
pp. 229-31, 244, 246-47 (demonstrating that fire related concerns were only considered *at Relic’s premises* to the
exclusion of the rest of the Soda Canyon Road community); see also Opening Brief at 47:17-48:24.

1 winds were gusting all afternoon, when more members of the public, including wine tasting
2 tourists, were on the road, there could have been substantially more than two lives lost. Instead
3 of 15-20 cars backed up at the fallen tree, there could have been 40-50 cars and those at the back
4 may not have escaped, particularly with a fire that was moving at **68 miles per hour**.
5 Alternatively, unfamiliar tourists who do not know the road could easily have panicked while
6 driving, rolled their car and fatally injured themselves or others.

7 19. The October 25, 2017 accident, which involved a single passenger car towing a
8 trailer that rolled at the 90-degree, hairpin turn at the 3.9 mile-mark of Soda Canyon Road and
9 ended upside down in the creek, is also not the first, nor will it be the last major accident
10 occurring at that location, particularly if alcohol-imbibing tourists are encouraged to drive up to
11 Respondent's winery. At the hearing, Ms. Grupp testified that the location of her property,
12 similar to Relic, is approximately 0.2 miles past the 90-degree, hairpin turn at approximately the
13 3.9-mile mark of Soda Canyon Road. *Feb. 10 Transcript* at 120:3-121:24. She described
14 numerous vehicle accidents involving both cars and trucks over the years at that curve, which
15 does not have any guardrails or protection to prevent vehicles from going off the road, down the
16 embankment, and into Soda Creek. *See id.*

17 20. Both of these catastrophic events, and particularly the Atlas Fire, verify
18 Appellants' repeated contentions and concerns that Soda Canyon Road, under existing
19 conditions, is extremely dangerous, and thus not suitable for all of the purposes Respondent
20 seeks a license from the Department. Allowing, and in fact encouraging, another 4,500
21 potentially inebriated individuals to drive 4.1 miles up the dead-end Soda Canyon Road to taste
22 wine at Respondent's winery, and then another 4.1 miles down Soda Canyon Road afterward is
23 going to increase that danger because these individuals may 1) cause fires on the road, 2) impede
24 escape efforts of others in the event another major fire, and/or 3) cause more potentially life-
25 threatening accidents on the road. This, in turn, is contrary to the public welfare and morals of
26 all residents and current users of Soda Canyon Road, as ***"traffic, parking, safety, noise and***
27 ***nuisance problems . . . clearly represent concerns that are well within the domain of the public***
28

1 *interest and public welfare.” Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th
2 1205, 1246 (emphasis added).

3 21. The evidence attached to this supplemental declaration pertains to public safety
4 and traffic-related incidents from residents or property owners of Soda Canyon Road, a qualified
5 mapping expert in this case, and two different governmental agencies that are charged with
6 protecting and enforcing the public’s safety, on the very dead-end road where the Applicant
7 seeks to utilize a license from the Department. This authentic and reliable evidence proves how
8 dangerous Soda Canyon Road is and can be under existing conditions. As such, this evidence is
9 clearly “within the domain of the public interest and public welfare,” and is thus highly relevant
10 to the Department’s consideration of granting a Type 02 license to the Applicant.

11 22. This Additional Newly Discovered Evidence relates to the entirety of Appellants’
12 and their witnesses’ testimony relating to fire and public safety incidents on Soda Canyon Road
13 and how they impact the public’s safety and welfare because it highlights (1) how truly
14 devastating and damaging – both in terms of loss of life, and loss of property – the Atlas Fire was
15 to the entire Soda Canyon Road community, including in and around Respondent’s winery, *see*
16 **Exhibits 1-6, 9**; (2) the topography of Soda Canyon, which directly contributed to how rapidly
17 the fire spread on the night of Sunday, October 8, 2017, *see Exhibit 3*; (3) the history and
18 frequency of small and large-scale perennial fires on Soda Canyon Road, *see Exhibit 3*; and (4)
19 the dangerous nature of the 90-degree, hairpin turn at the 3.9 mile-mark of Soda Canyon that is
20 *before* Respondent’s winery on the way up the road, and is *after* Respondent’s winery on the way
21 down the road. *See Exhibits 7-8*. Even Judge Loehr, who initially handled this case in 2015,
22 correctly outlined that in their protests, Appellants “raised concerns about public safety because
23 of the potential for increased fires from additional vehicular and patron activity, and the inability
24 of resident to ingress and/or egress the area on the two-lane road.” *Certified Transcript from*
25 *July 15, 2016 (“July 15 Transcript”)* at 18. He further responded to an early attempt by
26 Respondent to exclude the majority of Appellants’ exhibits pertaining to CalFire and CHP
27 reports, as well as other public safety related documents, on relevancy grounds, by stating that
28 “what the Protests did do, at least from my reading of them, was that they framed it in a manner

1 such as this: *That the issuance of the license poses a serious safety risk to the public welfare,*
2 *which is a “broad concept.”* July 15 Transcript at 23 (emphasis added).

3 23. More specifically, this evidence which could not have been earlier produced
4 relates to the testimony of Mr. Arger, Mr. Shepp, Mrs. Shepp, Mr. Apallas, Ms. Palotas, Mr.
5 Heitzman, Mr. Wilson, Ms. Hirayama, Mrs. Hallett, and Mr. Hocker, all of whom raised
6 concerns of either/both the existing dangerous conditions and public safety concerns from fires
7 to traffic and accidents on Soda Canyon Road. See July 15 Transcript at 18-20, 23, 30-31, 182;
8 Feb. 9 Transcript at pp. 15, 17, 20, 23-25, 29, 31-32, 37-40, 72-81, 107, 116-17, 124-25, 128,
9 130-31, 138, 147-48, 153, 157-58, 161, 165, 174-77, 184-85, 190; Feb. 10 Transcript at pp. 26,
10 57-58, 66, 69-70, 88-89, 107-110, 122, 128-134, 144, 154-55, 184-187, 189, 191-95, 206-07,
11 211-12, 215-17, 231, 263, 278; Feb. 11 Transcript at pp. 16, 18-20, 21, 23-24, 32-33.

12 24. Witnesses expected to testify on this evidence include Mr. Arger and Ms. Grupp,
13 but could also include Mr. Schreuder, Mrs. Hallett, Mrs. Shepp, Ms. Palotas, Ms. Hirayama, Mr.
14 Heitzman, Mr. Hocker, Dr. Manfree, depending on availability. As to the substance of their
15 testimony, each of these individuals previously spoke about concerns relating to public safety in
16 the form of traffic accidents and fire, and would use this evidence to further demonstrate the
17 inherent, existing dangers of the dead-end, narrow, steep and dilapidated Soda Canyon Road.

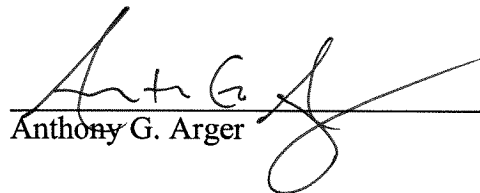
18 25. The nature of the exhibits to be introduced is primarily documentary (**Exhibits 1-**
19 **8**), as well as one video (**Exhibit 9**).

20 26. None of the exhibits, that is **Exhibits 1-9**, could have been produced at the
21 hearing before the Department, even with due diligence, because the events took place *after* the
22 hearings before the Department, thus making it impossible to have produced them because they
23 had not yet occurred. As clearly outlined by the California Supreme Court, the admission of
24 evidence relating to facts occurring *after the conclusion of a trial is permissible* where the
25 moving party can “make a strong case” for its inclusion. *Nebelung v. Norman*, 14 Cal. 2d 647,
26 655, 96 P.2d 327, 331 (1939). Here, two of the major concerns outlined by Appellants at the
27 hearing before the Department included (1) the concern of a major fire, and (2) accidents at the
28 hairpin turn below the entrance to Respondent’s winery. The evidence attached hereto relates to

1 (1) one of northern California's most devastating fires ever that burned 51,625 acres, including
2 the vast majority of Soda Canyon, taking the lives of two Soda Canyon souls along with it, and
3 (2) a serious, rollover accident at the hairpin turn just below the entrance to Respondent's
4 winery. In light of the fact that the Department is charged with protecting the public welfare and
5 morals, this evidence, which demonstrates with painful reality how dangerous Soda Canyon
6 Road is under existing conditions, is crucial to the Department's decision in the event of any
7 remand by the Appeals Board.

8 27. In terms of the late timing, Appellants do sincerely apologize for the late notice
9 pertaining to this evidence. However, our world has been turned upside down following the
10 Atlas Fire, and it will months before all of us can return to some sense of normalcy. Moreover,
11 much of this evidence, particularly that obtained from Napa County and CalFire, was only made
12 public very recently, thus making it impossible to have produced it any earlier.

13
14 I declare under penalty of perjury under the laws of the States of Nevada and California
15 that the foregoing is true and correct. Executed as of this 4th day of December, 2017 at Reno,
16 Nevada.

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