

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)		
)		
)	Case No.:	14-PRO-00097
The Popal Group, LLC)	License No:	0875836
t/a Napoleon)	Order No:	2014-343
)		
Application to Renew a)		
Retailer's Class CR License)		
)		
at premises)		
1847 Columbia Road, N.W.)		
Washington, D.C. 20009)		

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ALSO PRESENT: The Popal Group, LLC, t/a Napoleon, Applicant

Stephen O'Brien, of the firm Mallios & O'Brien, on behalf of the Applicant

Ted Guthrie, Secretary, Advisory Neighborhood Commission (ANC) 1C, Protestant

Denis James, President, Kalorama Citizens Association (KCA), Protestant

Sonam Henderson, on behalf of a Group of Five or More Residents and Property Owners (Henderson Group), Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) hereby approves the Application to Renew a Retailer's Class CR License filed by The Popal Group, LLC, t/a Napoleon, (hereinafter "Applicant" or "Napoleon") subject to conditions. Specifically, based on the ownership's failure to ensure that the establishment is properly supervised and operates in accordance with its settlement agreement, the Board limits the occupancy of the first floor to ninety patrons and limits the occupancy of the basement to fifty-five patrons. The Board also prohibits Napoleon from having a dance floor or providing entertainment on the first floor. The Board reminds Napoleon's management that the terms of the settlement agreement strictly limit the ability of the establishment to morph into a nightclub; therefore, compliance with that agreement would likely have prevented many of the problems identified by the protestants.

Procedural Background

The Notice of Public Hearing advertising Napoleon's Application was posted on May 24, 2013, and informed the public that objections to the Application could be filed on or before July 8, 2013. *ABRA Protest File No. 14-PRO-00097*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 1C, the Kalorama Citizens Association (KCA), a Group of Five or More Residents and Property Owners represented by Sonam Henderson. *ABRA Protest File No. 14-PRO-00097*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on July 22, 2013, where all of the above-mentioned parties were granted standing to protest the Application. On September 11, 2013, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on July 16, 2014.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). Accordingly, the Board "must elaborate, with precision, its response to the ANC['s] issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received a written recommendation from ANC 1C, which protests the license on the grounds that the Applicant is having an adverse impact on peace, order, and quiet and generating noise problems. *Resolution to Protest Napoleon Renewal*, ANC 1C (Jun. 20, 2013). The ANC's issues and concerns shall be addressed by the Board in its Conclusions of Law.

Based on the issues raised by the protestants, the Board may only grant the Application if the Board finds that the request will not have an adverse impact on the peace, order, and quiet and residential parking and vehicular safety of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. Napoleon has submitted an Application to Renew a Retailer's Class CR License at 1847 Columbia Road, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Abyie Ghenene investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 14-PRO-00097, Protest Report* (Jul. 2014) [*Protest Report*].
3. The establishment is located in a C-2-B zone. *Protest Report*, at 3. Fifty-six licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, public libraries, or day care centers located within 400 feet of the establishment, but the Kalorama Recreation Center is located approximately 179 feet from the establishment. *Id.* at 6. Investigator Ghenene observed that a bus stop sits in front of the establishment. *Transcript (Tr.)*, July 16, 2014 at 45.
4. According to the public notice, Napoleon's hours of operation and hours of sale, service, and consumption of alcoholic beverages run from 10:00 a.m. to midnight on Sunday; 11:30 a.m. to midnight on Monday; 11:30 a.m. to 1:00 a.m. on Tuesday; 11:30 a.m. to 2:00 a.m. on Wednesday and Thursday; 11:30 a.m. to 3:00 a.m. on Friday; and 10:00 a.m. to 3:00 a.m. on Saturday. *Notice of Public Hearing*. The establishment's hours of entertainment run from 6:00 p.m. to midnight, Sunday through Tuesday; 6:00 p.m. to 1:00 a.m. on Wednesday; 6:00 p.m. to 2:00 a.m. on Thursday; and 6:00 p.m. to 3:00 a.m. on Friday and Saturday. *Id.* The hours of operation and hours of sale, service, and consumption of alcoholic beverages on Napoleon's summer garden run from 12:00 p.m. to 11:00 a.m. *Id.*; *Protest Report*, at 7-8.
5. Investigator Ghenene also monitored Napoleon on various occasions from February 22, 2014, to April 19, 2014. *Protest Report*, 8-9. During his visits to the area, he heard noise coming from the establishment when people opened and closed Napoleon's doors. *Tr.*, 7/16/14 at 27. He did not observe significant issues regarding peace, order, and quiet during his visits. *Protest Report*, at 8-9.
6. Investigator Ghenene also researched the establishment's enforcement history. *Tr.*, 7/16/14 at 29. The Metropolitan Police Department (MPD) reported twenty-one calls for service at the address, although none of the calls led to a referral to ABRA. *Protest Report*, at 9. ABRA's Noise Task Force did not receive any noise complaints regarding the establishment between September 11, 2013 and July 10, 2014. *Id.* at 9. The establishment's investigative history shows that Napoleon committed an unlisted violation by violating the terms of its settlement agreement on January 14, 2012 (Case No. 12-CMP-00063); committed a secondary tier violation by failing to have an ABC Manager on duty on April 26, 2012 (Case No. 12-CMP-

00188); committed a secondary tier violation for failing to have its settlement agreement available on June 30, 2012 (Case No. 12-CMP-00291); received a warning for failing to properly maintain its books and records and violated the posting requirement, which constitutes a secondary tier violation (Case No. 12-CMP-00624); committed a secondary tier violation by not having an ABC Manager on duty on September 17, 2013 (Case No. 13-CMP-00468); committed a secondary tier violation by failing to have an ABC manager on duty on February 23, 2014 (Case No. 14-CMP-00098); and received a warning for a sale to minor violation that occurred on May 22, 2014 (Case No. 14-CC-00068). *Id.* at 9-10.

I. Omar Popal

7. Omar Popal owns Napoleon and lives on Mintwood Place, N.W. *Id.* at 112. The establishment operates as a French bistro on the first floor with a champagne bar on the lower level. *Id.* at 114, 116; *Applicant's Exhibit No. 2*. During the week, Napoleon does not generally open for lunch and begins operations at 5:00 p.m., but offers brunch during the weekends. *Tr.*, 7/16/14 at 194. The establishment is located near a number of residential buildings. *Id.* at 131. The establishment's champagne bar focuses on serving champagne cocktails and small plates. *Id.* at 196, 227-28.

8. The establishment has security every night Napoleon is open for business, including when the establishment provides disc jockey (DJ) entertainment. *Id.* at 231. On Friday, the establishment has one security staff, and on Saturday the establishment provides two security staff. *Id.* at 232. Dancing is provided in the downstairs level. *Id.* at 254.

9. The establishment expanded its space in the last year and uses the new space for special events using the trade name Hierarchy and Cru. *Id.* at 116-17, 119. The establishment recently used the space to host an art event. *Applicant's Exhibit No. 1*; *id.* at 120. Mr. Popal also uses the space for fundraisers and happy hours. *Id.* at 122-23.

10. Mr. Popal admitted that the establishment has received complaints about its operation. *Id.* at 115. Specifically, people have complained that the establishment's patio is too noisy. *Id.* Further, there have also been complaints from people inside Napoleon's building. *Id.* Mr. Popal has also received complaints about people congregating in front of the establishment. *Id.* at 115.

11. Mr. Popal further admitted that the building has soundproofing issues. *Id.* at 125. When the establishment first opened, the owners received numerous noise complaints regarding noise in their basement. *Id.* After investigating the disturbance, the owner and Mr. Popal determined that the noise was generated from a "dummy hollow wall and pipe." *Id.* This sound problem was addressed by filling in the area. *Id.* This problem also exists in the new expansion space; however, Mr. Popal believes the establishment cannot use the same method to fix the problem due to the building above the new space. *Id.* at 125-26, 133. He also noted that on one occasion, patrons attending a college event at the establishment became extremely loud when they left the establishment. *Id.* at 128-29. In an effort to control noise from the establishment's speakers and patrons, Napoleon has removed some speakers, hired additional security, and posted appropriate signage. *Id.* at 132-33, 178. The establishment also hired a sound engineer in 2014, but that

sound engineer has not finished his work as of the date of the Protest Hearing. *Id.* at 173-74, 217.

12. Mr. Popal asserted that he was unaware of the settlement agreement when his family initially purchased the business. *Id.* at 204. Mr. Popal could not affirm on the record that the establishment has been in compliance with its settlement agreement before the Protest Hearing, even after Mr. Popal allegedly learned about it. *Id.* at 206-07. Mr. Popal also admitted that he mistakenly had live music in the expansion space on two occasions and permitted a cover charge during the second event. *Id.* at 126, 130. He admitted that his establishment was not allowed to host these events or charge a cover charge under the terms of the settlement agreement. *Id.* at 127, 207.

13. The establishment's occupancy is limited to 274 patrons. *Id.* at 274. Under the terms of the establishment's settlement agreement, the establishment has a limit of 145 persons in the basement and first floor. *Id.* at 139.

II. Certificates of Occupancy

14. A 2003 certificate of occupancy for the prior establishment, trading as Mantis, lists the occupancy of the basement and first floor as 274. *Applicant's Exhibit No. 3.* A 2006 certificate of occupancy lists the occupancy of the basement and first floor as 274. *Applicant's Exhibit No. 4; see also Applicant's Exhibit No. 5.*

III. Peter Holguin

15. Peter Holguin lives approximately one block from Napoleon on Biltmore Street, N.W. *Id.* at 73. Mr. Holguin lives directly across the street from another establishment, not Napoleon. *Id.* at 74. He patronizes Napoleon at least twice per week and is not aware of any disturbances caused by the establishment. *Id.* at 74-75, 80. Mr. Holguin indicated that he did not regularly patronize the establishment during the late night and early morning. *Id.* at 77, 79-80.

IV. Girard Ender

16. Girard Ender lives on Columbia Road, N.W., in a nearby apartment that faces Perry's, another licensed establishment in the neighborhood. *Id.* at 82-83. Mr. Ender patronizes the establishment at least twice per week. *Id.* at 83.

17. As a resident in the neighborhood, he has not heard music emanating from the establishment. *Id.* at 84. He admitted that he can sometimes hear patrons yelling on the corner of 18th Street, N.W., and Columbia Road, N.W., from his apartment on Friday and Saturday. *Id.* at 85. He noted that based on the location of his apartment, he would not know if a large and boisterous crowd was loitering around Napoleon when he is home. *Id.* at 89.

V. Matt Hendrickson

18. Matt Hendrickson lives on Mintwood Place, N.W., approximately 150 yards from Napoleon. *Id.* at 93-94. He patronizes the establishment at least once per month. *Id.* at 94. During his visits to the establishment, he has never witnessed large crowds or patron related-disturbances. *Id.* at 94, 98.

VI. Abdul Kabbani

19. Abdul Kabbani lives on Columbia Road, N.W., in the same building as Mr. Hendrickson. *Id.* at 100-01. Mr. Kabbani's apartment faces Columbia Road, N.W. *Id.* at 101. He has only lived in the neighborhood for three months. *Id.* Based on his observations as a patron, he believes the establishment has a calm atmosphere. *Id.* at 102-03. Nevertheless, he noted on one occasion, he observed individuals loitering and yelling outside the nearby pool hall. *Id.* at 103.

VII. Sonam Henderson

20. Mr. Henderson lives in a residence across the street from Napoleon. *Id.* at 275. He can see the establishment's entrances from his window. *Id.* The Board takes administrative notice that this property is located in a C-2-B commercial zone. *Id.* at 391.

21. Mr. Henderson described his concerns regarding noise from Napoleon's sound system. *Id.* at 276. He described the problem as ongoing for the past two years. *Id.* at 275-76. Beginning in November 2012, he could hear Napoleon's house music in his bedroom around 3:00 a.m. on the weekends. *Id.* at 277-78. He noted that the sound was so loud that it shook his windows and prevented him from sleeping on the weekends. *Id.* at 278. He noted this occurred regularly between November 2012 and early March 2013. *Id.*

22. Since March 2013, there have been more sporadic noise incidents related to the establishment's sound system. *Id.* On one occasion, around midnight, a DJ playing on the first floor played music so loud that he could hear it in his bedroom. *Id.* at 278-79. Mr. Henderson left his home to speak to one of the owners, who promptly shut the music down. *Id.* at 278. Further, during Pride Week, he observed the establishment's house music was shaking his windows. *Id.* at 279. He went to the establishment and observed a long line in front of the establishment without any security. *Id.* Mr. Henderson observed that the noise was coming from the establishment's door, which was propped open. *Id.* After he spoke to one of the owners, the establishment closed the door. *Id.* Mr. Henderson indicated that his issues regarding Napoleon's amplified music must have been "mostly resolved," although incidents still occur on occasion. *Id.* at 395-96, 425.

23. Mr. Henderson also described his concerns regarding noise from Napoleon's patrons. *Id.* Specifically, he has observed that the establishment's patrons frequently congregate in large groups outside the establishment. *Id.* at 280, 282-83; *see also id.* at 472. These patrons regularly engage in shouting and making statements like "I am so f'ing drunk." *Id.* at 280, 283. He has also observed patrons exit the establishment yelling. *Id.* at 283. Mr. Henderson has observed the

establishment's security outside during these incidents; however, they do not appear to take any action to quell noise disturbances caused by patrons. *Id.* at 281-82; *see also id.* at 459.

24. Mr. Henderson also discussed a specific incident involving Napoleon's patrons on May 4, 2013. *Id.* at 291, 296. On the night of May 4, 2013, around 3:00 a.m., Mr. Henderson and his wife, as well as their house guests, were awoken by noise outside their home. *Id.* at 292, 294. Outside Napoleon, a large crowd of rowdy and boisterous patrons had gathered outside the establishment. *Video* ("3 a.m. webm") at 00:00; 01:08. A number of patrons conducted a push-up contest in the middle of the street and a large number of patrons entered the street to cheer on the participants. *Id.* at 00:01 – 00:22. After the push-up contest, patrons continued to linger in the street. *Id.* at 00:22 – 00:54. Vehicles attempted to maneuver around the crowd, which could be observed obstructing traffic. *Id. e.g.*, at 00:35 – 1:00; 01:10-01:12; 02:09 – 02-11. Finally, two male patrons attempted to lift a young man in the air in the middle of the street and almost accidentally threw the young man into a passing vehicle. *Id.* at 02:35 – 02:41.

25. Mr. Henderson also observed a BKYLN 1834, a band, unloading and loading musical equipment outside the establishment on March 19, 2014. *Id.* at 345; *Protestant's Exhibit No. 9*. Further, he observed a poster on the establishment's door advertising that the bands Foe destroyer, Masha, ATR777, and BKYLN were playing at the establishment on Wednesday March 19, 2014. *Id.* at 345-46; *Protestant's Exhibit No. 9* (picture of poster). The poster listed a cover charge of \$10 at the door and \$5 for students. *Tr.*, 7/16/14 at 346.

26. Mr. Henderson noted that finding parking in the evening is difficult during the dinner hour. *Id.* at 285.

VIII. Laura Riley

27. Laura Riley lives on Columbia Road, N.W., directly across the street from Napoleon. *Id.* at 426. She experiences many of the same issues discussed by Mr. Henderson. *Id.* She complained that noise from the establishment is particularly bad when the establishment has special events. *Id.* at 427. She affirmed that the noise from the establishment's crowds has not been abated, but the issues caused by the establishment's amplified music have, in her words, "improved." *Id.* at 427, 443. Her impression of Napoleon's operations is that it is morphing into a nightclub. *Id.* at 451.

IX. Settlement Agreement

28. A settlement agreement is attached to Napoleon's license. *In re India 2000, LLC, t/a Mantis*, Case No. 11590-04/101P, Board Order No. 2005-277 (D.C.A.B.C.B. Oct. 19, 2005) (See *Cooperative Agreement Concerning Renewal and Substantial Change of ABC License for Sale of Alcoholic Beverages*) [*Settlement Agreement*]

29. The agreement contains an occupancy restriction. *Settlement Agreement*, at § 4. The agreement limits the establishment's first floor to "90 persons, or the number of persons allowed by DCRA on a separate Certificate of Occupancy for the First Floor level, or shown by a separately listed number, whichever is smaller." *Id.* The agreement limits the occupancy of the

basement to “55 persons, or the number of persons allowed by DCRA on a separate Certificate of Occupancy for the basement level or shown by a separately listed number, whichever number is smaller.” *Id.* The agreement then states, “[t]he Parties agree to amend this section to reflect the actual occupancy, should the permitted numbers vary from those described above.” *Id.*¹

30. The settlement agreement also contains a number of noise provisions. Among other requirements,

- b. The doors and windows of the premises will be kept closed at all times during business hours when music is being played, or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises.
- c. Music from inside will not be audible at surrounding residential housing areas or within any residence at 1841 Columbia Road, NW (The “Alcazar”).
- d. There will be no cover charge.
- e. There will be no designated dance area.
- f. . . . a “Dinner DeeJay” playing low-to-medium volume music shall be permitted for Thursday through Saturday until the hours set forth in this agreement. There will be no other live entertainment of any type. The parties wish to make it clear that no musical instruments will be played in the establishment and that no drums will be kept on the premises.

Id. at § 5.

CONCLUSIONS OF LAW

31. The Board may approve an Application to Renew a Retailer's Class CR License when the proposed establishment will not have an adverse impact on area located within 1,200 feet of the establishment. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the question in this matter is whether the Application will have a negative impact on peace, order, and quiet and residential parking and vehicular safety of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

I. THE APPLICATION FILED BY NAPOLEAN IS ONLY APPROPRIATE SUBJECT TO CONDITIONS.

32. Under the appropriateness test, “. . . , the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for

¹ The agreement further states that modifications to the agreement shall only occur by the mutual written agreement of the parties with the approval of the Board. *In re India 2000, LLC, t/a Mantis*, Case No. 11590-04/101P, Board Order No. 2005-277, § 11 (D.C.A.B.C.B. Oct. 19, 2005).

the locality, section, or portion of the District where it is to be located . . .” D.C. Official Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2014).

a. Napoleon is not having an adverse impact on residential parking needs and vehicular and pedestrian safety.

33. The Board is not persuaded that Napoleon is having an adverse impact on residential parking needs and vehicular and pedestrian safety. “In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including: . . . The effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . .” D.C. Official Code § 25-313(b)(3); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). The primary focus of the parties in this matter was on whether the establishment satisfied the peace, order, and quiet requirement. The Board considers the events of May 4, 2013 described by the protestants to be a one-time, isolated incident. *Supra*, at ¶ 24.² Consequently, the Board finds insufficient evidence in the record to determine that the neighborhood suffers from inadequate parking or that the presence of the establishment constitutes an ongoing danger to pedestrians and vehicles.

b. Napoleon is having an adverse impact on the neighborhood’s peace, order, and quiet by operating in an unlawful manner.

34. The Board finds that the establishment is having an adverse impact on the neighborhood’s peace, order, and quiet by failing to ensure that the establishment operates in a lawful manner and in compliance with Napoleon’s settlement agreement.

35. “In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including: . . . The effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Official Code § 25-313(b)(2); *see also* D.C. Official Code §§ 25-101(35A), 25-314(a)(4). Furthermore, during renewal, “[t]he Board shall consider the licensee’s record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.” D.C. Official Code § 25-315(b)(1). “Thus any breach of the voluntary agreement constitutes a breach of the license itself and must be taken into account by the Board in considering an application for renewal of the license.” *N. Lincoln Park Neighborhood Ass’n v. Alcoholic Beverage Control Bd.*, 666 A.2d 63, 67 (D.C. 1995).

36. The record in this case demonstrates that the ownership of Napoleon is failing to ensure that the establishment complies with the law. In *Panutat*, the court found it reasonable for the Board to consider whether an owner will operate an establishment in a manner that will detrimentally impact the neighborhood. *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 275 (D.C. 2013). First, the establishment’s investigative history shows that it has

² In addition, the Board considers the incident more related to peace, order, and quiet, rather than any other factor.

failed to have an ABC manager on duty on three separate occasions. *Supra*, at ¶ 6. This particularly concerns the Board, because repeat violations demonstrate an inability (if not flagrant disregard) on the part of management to comply with the law, even when on notice that a particular action is illegal. *Id.*

37. Second, the record shows that Napoleon has regularly operated out of compliance with its settlement agreement. *Supra*, at ¶¶ 6. Under § 25-446, an establishment is required to operate in accordance with the terms of a settlement agreement attached to its license. D.C. Official Code § 25-446(c), (d)(1), (e). In this case, Napoleon received two violations; one violation related to having its settlement agreement on the premises as required by law and one violation related to failing to follow the terms of the agreement. *Id.* In addition to these official violations, Mr. Popal admitted that the establishment failed to comply with the terms of the agreement on several occasions by hosting live music and permitting a cover charge. *Supra*, at ¶ 12. The protestants also demonstrated that Napoleon failed to comply with section 5 of the agreement by permitting the establishment's amplified music to be heard in a residence on a regular basis, failing to keep its door closed while playing music on an amplification device, and permitting musical instruments to be played in the establishment. *Supra*, at ¶¶ 21-22, 25, 27 30. Worse, even when Mr. Popal allegedly became aware of the agreement, he could not assure the Board that Napoleon operated in compliance with the agreement. *Supra*, at ¶ 6.

38. Third, the protestants demonstrated that crowd control is a problem at the establishment. First, on May 4, 2014, video footage shows the establishment's patrons engaging in horseplay in the middle of the street and show two patrons almost throwing another patron against a moving vehicle. *Supra*, at ¶ 24. Second, it does not appear that the establishment's security take any action to prevent patron disturbances outside the establishment. *Supra*, at ¶ 23. Third, it appears that the establishment's crowds regularly engage in loud and boisterous behavior. *Supra*, at ¶¶ 23-24, 27. Consequently, based on these facts, the Board is left to conclude that the establishment's operations are having a negative impact on the neighborhood's peace, order, and quiet based on its demonstrated failure to properly superintend the establishment and comply with the law.

c. The Board imposes conditions on the license in order to resolve the peace, order, and quiet issues caused by Napoleon's operations.

39. In light of the Board's findings regarding appropriateness, the Board finds it necessary to impose conditions on Napoleon's license in order to justify the renewal of the license. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying "[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license"). Under § 25-104(e), the Board is granted the authority to impose conditions on a license when ". . . the inclusion of conditions will be in the best interest of the [neighborhood] . . ." D.C. Official Code § 25-104(e).

40. The record in this case demonstrates that Napoleon's management has not properly superintended the establishment and regularly disturbed nearby residents in the process;

specifically, management failed to ensure that the establishment had an ABC manager on the premises on multiple occasions and failed to comply with its settlement agreement. *Supra*, at ¶¶ 33-37. Indeed, many of the problems identified by the protestants would never have occurred in the first place had Napoleon complied with the terms of its settlement agreement. Consequently, based on management's failure to properly superintend the premises, the Board finds that it is in the best interest of the neighborhood to curtail the establishment's occupancy and restrict the establishment's potential to become a nightclub. In that vein, the Board limits the occupancy of the first floor to ninety patrons and the occupancy of the basement to fifty-five patrons. The Board further prohibits the establishment from having a dance floor or offering entertainment on the first floor. The Board finds that limiting the establishment's occupancy and preventing nightclub activities on the first floor will reduce the impact of the establishment on the neighborhood's peace, order, and quiet.

II. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 1C'S ISSUES AND CONCERNS.

41. ANC 1C's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Napoleon's impact on peace, order, and quiet and residential parking and safety. The Board notes that it specifically addressed these concerns in the Board's Conclusions of Law contained in this Order.

III. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.

42. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (West Supp. 2014). Accordingly, based on the Board's review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 1st day of October 2014, hereby **APPROVES** the Application for a New Retailer's Class CR License at premises 1847 Columbia Road, N.W. filed by The Popal Group, LLC, t/a Napoleon subject to the following conditions:

1. The establishment's basement space shall have a maximum occupancy of fifty-five (55) people.
2. The establishment's first floor shall have a maximum occupancy of ninety (90) people.
3. The establishment shall not provide a dance floor or entertainment, as provided by D.C. Official Code § 25-101(21A), on the first floor of the establishment.

The Board **ADVISES** Napoleon that the Board will monitor and strictly enforce the conditions contained in this Order, as well as the establishment's settlement agreement.

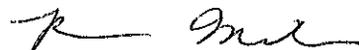
The Board further issues the following advisories to the parties as to the Board's interpretation of various provisions in the settlement agreement:

1. The Board **ADVISES** Napoleon that a "cover charge" is any "fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink." 23 DCMR § 1002.1 (West Supp. 2014). Consequently, the sale of tickets to patrons to attend an event or concert at the establishment unrelated to the sale of food or drink constitutes an illegal cover charge in violation of the establishment's settlement agreement. *Settlement Agreement*, § 5(d).
2. The Board **ADVISES** Napoleon that, other than a DJ at specified times, there is a complete prohibition on any sort of live entertainment inside the establishment under the terms of its settlement agreement. *Settlement Agreement*, § 5(f). This includes live bands, karaoke, comedy shows, and poetry readings. D.C. Official Code § 25-101(21A); *Settlement Agreement*, § 5(f).
3. The Board **ADVISES** Napoleon that the establishment's settlement agreement prohibits Napoleon from having its music heard inside a residence, regardless of the zoning. *Settlement Agreement*, at § 5(e).
4. The Board **ADVISES** Napoleon that is not permitted to keep its door or windows propped open when amplified music is being played in the establishment. *Settlement Agreement*, § 5(b).

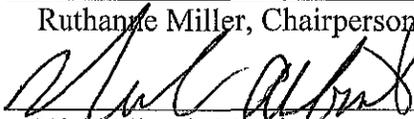
The Board further **ADVISES** Napoleon that ABRA's electronic records currently show that the establishment has registered the following trade names for the establishment: Napoleon, Hierarchy, and Cru. *ABRA Licensing File No. 075836*. If the establishment intends to use the trade name "Metropolitan," Napoleon should ensure that ABRA's records reflect all of the establishment's registered trade names or request an additional trade name pursuant to 23 DCMR § 600.1, if necessary. *Tr.*, 7/16/14 at 118 ("... since the downstairs bar was the champagne lounge . . . we referred to that as Metropolitan . . .").

The ABRA shall deliver a copy of this order to the Applicant, ANC 1C, KCA and Sonam Henderson on behalf of the Henderson Group.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



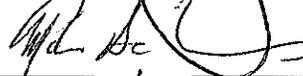
Nick Alberti, Member



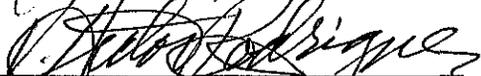
Donald Brooks, Member



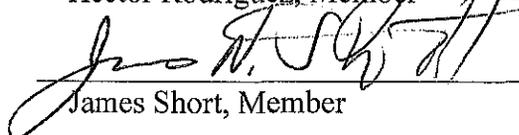
Herman Jones, Member



Mike Silverstein, Member



Héctor Rodríguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1, any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).