

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

B.G.S. 00 LLC  
d/b/a BOOMERS SPORTS BAR &  
GRILL  
611 MAIN ST  
VANCOUVER, WA 98660-3129

LICENSEE

LICENSE NO. 080505-1J  
AVN 1L8337D

LCB NO. 22,894  
OAH NO. 2009-LCB-0006

AMENDED ORDER DENYING  
MOTION FOR  
RECONSIDERATION

The above entitled matter coming on regularly before the Board, and it appearing that:

The above entitled matter coming on regularly before the Board, and it appearing that:

1. The Liquor Control Board issued its Final Order in this case on August 17, 2010.
2. The Licensee, through its attorney William Baumgartner filed a Petition for Reconsideration, received by the Board on August 27, 2010.
3. The Education and Enforcement Division of the Board, through Assistant Attorney General Brian Considine, filed a Response to the Licensee's Motion on September 3, 2010.
4. The order issued on September 22, 2010 contained a typographical error in the order section and this order is being issued to correct that error.
5. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE;

IT IS HEREBY ORDERED that the Petition for Reconsideration is DENIED.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 22,894 is sustained and that the liquor license privileges granted to B.G.S. 00 LLC d/b/a Boomer's Sports Bar and Grill at 611 Main Street

ORDER DENYING MOTION FOR  
RECONSIDERATION  
LCB NO. 22,894  
BOOMERS SPORTS BAR & GRILL  
LICENSE 080505-1J

in Vancouver, Washington, License 080505, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars (\$500.00) due within 30 days of this order. If timely payment is not received, suspension will take place from 10:00 a.m. on November 4, 2010 until 10:00 a.m. on November 9, 2010. Failure to comply with the terms of this order will result in further disciplinary action.

Payment in reference to this order should be sent to:

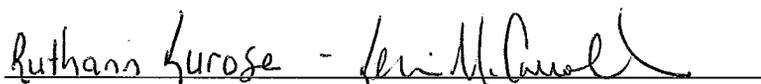
**Washington State Liquor Control Board**

**PO Box 43085**

**Olympia, WA 98504-3085**

DATED at Olympia, Washington this 23 day of September, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
\_\_\_\_\_  
  
-per telephonic approval  
\_\_\_\_\_

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).



Washington State  
Liquor Control Board

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September 23, 2010

William Baumgartner  
Attorney for Licensee  
112 W 11<sup>th</sup> St Ste 150  
Vancouver, WA 98660-3143

B.G.S.00 LLC  
d/b/a Boomers Sports Bar & Grill  
611 Main St  
Vancouver, WA 98660-3129

Brian Considine, AAG  
GCE Division, Office of Attorney General  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0100

**RE: AMENDED ORDER DENYING MOTION FOR RECONSIDERATION  
ADMINISTRATIVE VIOLATION NOTICE NO. 1L8337D  
LICENSEE: B.G.S.00 LLC  
TRADE NAME: Boomers Sports Bar & Grill  
LOCATION: 611 Main St, Vancouver, WA 98660-3129  
LICENSE NO. 080505  
LCB HEARING NO. 22,894  
OAH NO. 2009-LCB-0006  
UBI: 602 066 671 001 0001**

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Board Notice in the above referenced matter.

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Tacoma and Vancouver Enforcement and Education Divisions, WSLCB  
Amber Harris, WSLCB

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

B.G.S. 00, LLC  
d/b/a BOOMERS SPORTS BAR &  
GRILL  
611 MAIN STREET  
VANCOUVER, WA 98660

LICENSEE

LICENSE NO. 080505  
AVN NO. 1L8337D

LCB NO. 22,894

OAH NO. 2009-LCB-0006

BOARD NOTICE TO PARTIES OF  
RECONSIDERATION OF FINAL  
ORDER

The Board issued its Final Order, supporting the Initial Order of the ALJ's recommended decision, on August 17, 2010, which was served on the parties by mail on August 18, 2010. On August 27, 2010, the Board received a request for Reconsideration from the Licensee.

The Board will consider the Licensee's request for Reconsideration. The Education and Enforcement Division may, but is not required to, file a response to the request for Reconsideration, no later than September 7, 2010. No reply by the Licensee shall be filed without further request by the Board. The Final Order of the Board is hereby stayed, pending further order of the Board. The Board will issue its decision on Reconsideration on or before September 22, 2010.

DATED at Olympia, Washington this 31<sup>st</sup> day of August, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

Linda J. Bremer

Sharon Foster

Rutmann Kevoze

Service. This Order was served on you the day it was deposited in the United States mail. RCW

34.05.010(19).

FINAL ORDER OF THE BOARD  
LCB NOS. 22,893  
DUBLIN DOWN

RECEIVED

AUG 27 2010

LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In Re:

B.G.S, 00, LLC, dba Boomers  
Sport Bar & Grill

611 Main Street  
Vancouver, WA 98660

Licensee

License No. 080505

OAH No.: 2009-LCB-0006  
LCB No.: 22,894

LICENSEE'S PETITION  
FOR RECONSIDERATION

B.G.S, 00, LLC, d/b/a Boomers Sport Bar & Grill ("Licensee"), by and through Licensee's attorneys, William V. Baumgartner and Laurence R. Wagner of Baumgartner, Nelson & Price, PLLC, submits this petition for reconsideration of the Final Order of the Board entered in this matter on August 17, 2010.

**STATEMENT OF GROUNDS**

The Washington State Liquor Control Board ("WSLCB") should reconsider and reverse its Final Order, because WSLCB Enforcement officers do not have the authority to use minor investigative aides to enter onto premises posted off limits to minors in the absence of a rule promulgated by the WSLCB under RCW 66.08.030.

**POINTS AND AUTHORITIES**

The sale of liquor is a highly regulated industry and the WSLCB unquestionably has broad powers with regard to the regulation of the sale of liquor in Washington. But as explained in *Hi-Starr, Inc. v. Washington State Liquor Control Bd.*, 106 Wn.2d 455, 458-59, 722 P.2d 808 (1986), that power must be exercised through publicly adopted regulations:

1 “Legislative functions cannot be delegated to an administrative body but the  
2 Legislature may delegate administrative power. *Keeting v. PUD 1*, 49 Wn.2d 761,  
3 767, 306 P.2d 762 (1957); *see also* 1 C. Koch, *Administrative Law & Practice* § 1.22  
4 (1985); R. Pierce, Jr., S. Shapiro & 811 P. Verkuil, *Administrative Law & Process* §  
5 3.4.5 (1985); B. Schwartz, *Administrative Law* § 2.12 (2d ed. 1984). Regarding the  
6 standards required for a proper delegation of administrative power *Barry & Barry, Inc.*  
7 *v. Department of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P.2d 540 (1972), *appeal*  
8 *dismissed*, 410 U.S. 977, 93 S.Ct. 1503, 36 L.Ed.2d 173 (1973), states:

9 [T]he delegation of legislative power is justified and constitutional, and the  
10 requirements of the standards doctrine are satisfied, when it can be shown (1)  
11 that the legislature has provided standards or guidelines which define in  
12 general terms what is to be done and the instrumentality or administrative body  
13 which is to accomplish it; and (2) that procedural safeguards exist to control  
14 arbitrary administrative action and any administrative abuse of discretionary  
15 power.’

16 “The dominion of the Board is broad and extensive. *Quan v. State Liquor Control*  
17 *Bd.*, 69 Wn.2d 373, 379, 418 P.2d 424 (1966). The broad powers of the Board are, in  
18 part, enumerated under RCW 66.08.050. The Board has the authority to make  
19 necessary and advisable regulations consistent with the spirit of RCW 66. RCW  
20 66.08.030(1); *see State ex rel. Thornbury v. Gregory*, 191 Wash. 70, 78, 70 P.2d 788  
21 (1937). However, the broad and extensive powers given the Board are not all  
22 inclusive. Numerous statutory guidelines have been provided which broadly define  
23 the authority and duty of the Board and which insure procedural safeguards against  
24 arbitrary administrative action and abuse of discretionary power. *See in particular*  
25 *RCW 66.08.010; .030; .050; .150; RCW 66.24.010; .400-.450; RCW 66.98.070; see*  
26 *also RCW 34.04.”*

The issue at this juncture is not whether the WSLCB has the authority to pass a  
regulation pursuant to RCW 66.08.030 allowing Enforcement to use minors in compliance  
checks at facilities that are restricted to adults. The issue at this juncture is whether, in the  
absence of a such a regulation, Enforcement may do so.

Without the guidelines of a regulation adopted pursuant to RCW 66.08.030,  
Enforcement is free to use minors in compliance checks without any safeguards for the  
protection of either the minor or the licensee, who is engaged in a legitimate business that  
generates substantial revenue for the State. Nothing prevents Enforcement from using minors  
under the age of 18 in compliance checks, even though they might be might be exposed to  
activities such as nudity and gambling. Nothing prevents Enforcement from using deceptively  
mature appearing minors in compliance checks. Indeed, Enforcement affirmatively argues

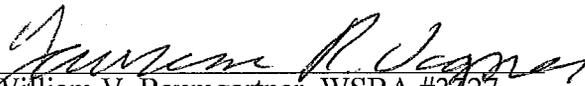
1 that its own internal policy, specifically WSLCB Enforcement Policy #287, which prohibits  
2 using deceptively mature minors and emphasizes that the safety of minor investigative aides  
3 used in compliance checks is paramount, is not binding on it and is "irrelevant."  
4 (Enforcement's Response to Licensee's Petition for Review, pg. 24, lines 7-8.) Allowing  
5 Enforcement to use a minor in compliance checks at facilities restricted to adults without the  
6 authority of a regulation adopted by the WSLCB invites arbitrary administrative action by  
7 Enforcement and abuse of Enforcement's discretionary power.

8 **CONCLUSION**

9 Without the authority of a rule adopted by the WSLCB pursuant to RCW 66.08.030,  
10 Enforcement's use of a minor in its compliance check at License's premises was unlawful.  
11 Licensee therefore respectfully requests that the WSLCB reconsider its Final Order and enter  
12 an Order dismissing the Complaint filed in this case.

13 DATED this 26<sup>th</sup> day of August, 2010.

14 BAUMGARTNER, NELSON & PRICE, PLLC

15  
16   
17 William V. Baumgartner, WSBA #3727  
18 Laurence R. Wagner, WSBA #17605  
Attorneys for Licensee

19 Baumgartner, Nelson & Price, PLLC  
20 112 West 11<sup>th</sup> Street, Suite 150  
21 Vancouver, WA 98660

Received

SEP 03 2010

WSLCB

RECEIVED

SEP 03 2010

LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

TOP SHELF, LLC d/b/a TOP SHELF GRILL; DUBLIN DOWN, LLC d/b/a DUBLIN DOWN; and B.G.S. 00, LLC d/b/a BOOMERS SPORTS BAR & GRILL,

LICENSEES.

OAH NOS. 2009-LCB-0004, 2009-LCB-0005 and 2009-LCB-0006  
LCB NOS. 22,892, 22,893 and 22,894

ENFORCEMENT'S RESPONSE TO LICENSEES' MOTIONS FOR RECONSIDERATION OF FINAL ORDERS

The Enforcement and Education Division of the Washington State Liquor Control Board (Enforcement), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and BRIAN J. CONSIDINE, Assistant Attorney General, submits this response in opposition to the Petitions for Reconsideration of the Final Order of the Liquor Control Board (Board) filed by Licensees TOP SHELF, LLC d/b/a TOP SHELF GRILL, DUBLIN DOWN, LLC d/b/a DUBLIN DOWN, and B.G.S. 00, LLC d/b/a BOOMERS SPORTS BAR & GRILL.<sup>1</sup>

**I. FACTUAL BACKGROUND**

On February 11, 2009, the Board issued separate Complaints to all three Licensees alleging that, on or about December 2, 2008, the Licensee or an employee thereof, gave, sold, and/or otherwise supplied liquor to a person under the age of 21, contrary to RCW 66.44.270 and WAC 314-11-020(1). In each case, Enforcement sought a five-day suspension of the

<sup>1</sup> As the content of the Petitions for Reconsideration filed by the three Licensees is identical, Enforcement is filing a single response to all three Petitions.

1 license or a five-hundred dollar (\$500) monetary penalty, as these were the first violations of  
2 their type for each of the Licensees within a two-year period. *See* WAC 314-29-020. All of  
3 the Licensees timely requested an administrative hearing.

4 In April 2009 the parties submitted stipulated facts and exhibits in all three cases.  
5 Thereafter, the Licensees moved to suppress the evidence and dismiss their cases. On  
6 November 18, 2009, Administrative Law Judge (ALJ) Janet Schneider denied the Licensees'  
7 motions to suppress and dismiss. On July 2, 2010, ALJ Schneider entered Findings of Fact,  
8 Conclusions of Law, and Initial Orders in each of the cases sustaining the Board's Complaints  
9 and recommending imposition of the standard penalties.

10 The Licensees timely filed Petitions for Review setting forth their exceptions to the  
11 ALJ's Initial Orders. On August 17, 2010, following consideration of the Licensees'  
12 exceptions to the Initial Orders, the Board issued Final Orders adopting and upholding ALJ  
13 Schneider's Initial Orders. On August 27, 2010, the Licensees filed Petitions for  
14 Reconsideration of the Board's Final Orders.<sup>2</sup>

## 15 II. ARGUMENT

### 16 A. Licensees' Petitions Do Not Advance Any New Legal Argument Or Authority.

17 Agencies have a limited right to reopen and reconsider their final decisions. *See* RCW  
18 34.05.470; *St. Joseph Hosp. v. Dep't of Health*, 125 Wn.2d 733, 743, 887 P.2d 891 (1995)  
19 (citing *Seattle v. Hall*, 24 Wn. App. 357, 362, 602 P.2d 366 (1979)). The general purpose for  
20 a motion for reconsideration is to allow the decision-maker to address errors of fact that result  
21 from fraud, mistake, or misconception, or to address obvious errors or law, irregularities in the  
22 proceedings below or newly discovered evidence. *See e.g.*, *St. Joseph Hosp.*, 125 Wn.2d at  
23 743 (quoting *Hall*, 24 Wn. App. at 363); CR 59(a). Its purpose is not to simply give the  
24 parties an opportunity to reargue their cases.

25 \_\_\_\_\_  
26 <sup>2</sup> Pursuant to RCW 34.05.470, any party in an administrative action may file a petition for  
reconsideration of an agency final order. A petition for reconsideration does not stay the effectiveness of an order  
and it is not a prerequisite for seeking judicial review. RCW 34.05.470(2), (5).

1 In these cases, the Licensees' Petitions for Reconsideration are misplaced. The  
2 Licensees do not offer any new evidence or legal authority that was not previously available,  
3 nor do they advance any legal argument not previously considered by the Board. Indeed, in  
4 their Petitions for Reconsideration, the Licensees do nothing more than restate one of their  
5 primary arguments. The Licensees have argued this same position before the Board in their  
6 Petitions for Review. *See* Licensees' Petitions for Review. Accordingly, the Licensees'  
7 Petitions for Reconsideration are an improper attempt to obtain another "bite at the apple,"  
8 and should, therefore, be denied.

9 **B. Compliance Checks Using Minor Operatives Are A Permissible Means By Which**  
10 **Liquor Enforcement Officers Discharge Their Statutorily Authorized**  
11 **Enforcement Of The Liquor Laws.**

12 In their Petitions for Reconsideration, the Licensees once again advance the argument  
13 that Enforcement may only conduct compliance checks at liquor establishments pursuant to  
14 publicly promulgated rules, and that in the absence of a rule specifically authorizing  
15 compliance checks, Enforcement is prohibited from acting. Specifically, the Licensees state:

16 The issue at this juncture is not whether the WSLCB has the authority to pass a  
17 regulation pursuant to RCW 66.08.030 allowing Enforcement to use minors in  
18 compliance checks at facilities that are restricted to adults. *The issue at this  
19 juncture is whether, in the absence of such a regulation, Enforcement may do so.*

20 Petitions at 2 (emphasis added).<sup>3</sup> Without citing to any relevant, new authority in support of  
21 their position, the Licensees assert that in the absence of a rule dictating how Enforcement  
22 officers may enforce liquor laws and rules, the use of minors in the conduct of compliance  
23 checks "invites arbitrary administrative action" and is unlawful. Petitions at 2-3. This

24 <sup>3</sup> The Licensees also assert that in the absence of the "guidelines" of a regulation, "Enforcement is free to  
25 use minors in compliance checks without any safeguards for the protection of either the minor or the licensee. . ."  
26 Petitions at 2. This is essentially a policy argument and the Licensees fail to provide any evidence or facts to  
demonstrate any minor investigative aid or licensee was ever in any actual or even probable peril during any  
particular compliance check. Moreover, the Licensees recognize that, while it is not binding law, Enforcement  
already has policies in place to assure the wellbeing of its minor investigative aides. Petitions at 3. The Licensees  
provide no legal authority indicating compliance checks are unlawful based upon its hypothetical fears. In short,  
their assertions are nothing more than hyperbole.

1 argument does not differ significantly from what the Licensees argued to the Board in their  
2 previously filed Petitions for Review. *See* Licensees’ Petitions for Review. Enforcement’s  
3 response, similarly, remains the same—the Licensees’ argument is without merit.

4 The Licensees fail, again, to demonstrate that Enforcement’s compliance checks at the  
5 Licensees’ establishments were unlawful. The sale of alcohol is historically a highly  
6 regulated industry, not only in Washington State, but throughout the nation. *See Colonnade*  
7 *Catering Corp. v. United States*, 397 U.S. 72, 90 S. Ct. 774, 25 L. Ed. 2d 60 (1970); *see also*  
8 *Jow Sin Quan v. Washington State Liquor Control Board*, 69 Wn.2d 373, 382, 418 P.2d 424  
9 (1966). The Legislature granted the Board broad power to “enforce the penal provisions of  
10 [Title 66 RCW] . . . and the penal laws of this state relating to the manufacture, importation,  
11 transportation, possession, distribution, and sale of liquor.” RCW 66.44.010(2); *see also*  
12 RCW 66.08.010. Therefore, the dominion of the Board in regulating, supervising, and  
13 licensing the retail sale of alcohol is “broad and extensive.”<sup>4</sup>

14 To carry out the Board’s statutorily prescribed duties, the Legislature has authorized  
15 the Board to “appoint and employ...liquor enforcement officers” who “shall have the power,  
16 under the supervision of the board, to enforce the penal provisions of this title and the penal  
17 laws of this state relating to the manufacture, importation, transportation, possession,  
18 distribution, and *sale of liquor*.” RCW 66.44.010(4) (emphasis added). When an  
19 enforcement officer believes that a licensee has violated the liquor laws, the officer is  
20 authorized to cite the licensee with an administrative violation. *See* WAC 314-29-005.

21 In the discharge of their duties, liquor enforcement officers, like their state, county,  
22 and city law enforcement counterparts, are permitted to utilize a wide variety of investigative  
23 tools. One such investigative tool is a controlled purchase, or “compliance check,” in which a

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24 <sup>4</sup> A liquor license does not constitute a vested property right, but rather “a temporary permit, in the nature  
25 of a privilege, to engage in a business that would otherwise be unlawful.” *Jow Sin Quan*, 69 Wn.2d at 382; WAC  
26 314-07-015; *see also Anderson, Leech, & Morse, Inc. v. Washington State Liquor Control Bd.*, 89 Wn.2d 688,  
694-95, 575 P.2d 221 (1978); *Scottsdale Insurance Co. v. Intl. Protective Agency, Inc.*, 105 Wn. App. 244, 249,  
19 P.3d 1058 (2001) (noting that a liquor license is “merely representative of a privilege granted by the state”).

1 minor decoy, employed by the Board, attempts to purchase alcohol from a licensed premise.  
2 Compliance checks allow liquor enforcement officers to observe and regulate a licensee's  
3 interactions with minors. *See* WAC 314-29-005(1).

4 There can be no doubt that Enforcement is empowered to enforce the statutes and rules  
5 of the Board. Additionally, the law is clear that selling alcohol to a person under the age of  
6 twenty one, as the Licensees have done in the instant cases, violates the law. Ultimately, the  
7 Licensees' argument insists that it is not enough that the Legislature and the Board have  
8 empowered liquor enforcement officers to enforce the laws and rules prohibiting minors from  
9 purchasing alcohol. The Licensees contend that the Board must also promulgate rules  
10 dictating the specific methods its officers may employ to enforce the law. *See* Petitions at 2-3.  
11 However, the Licensees do not cite to any relevant, new authority in support of its contention  
12 that an administrative agency with law enforcement powers must micro-manage what  
13 methods its agents must use to enforce the law, or forego such enforcement altogether.

14 Contrary to the Licensees' contention, the methods that law enforcement officers may  
15 employ to enforce the penal and administrative laws of this state need not be expressly spelled  
16 out in statute or rule before they may be used. Rather, the investigative creativity of law  
17 enforcement is constrained by statute, case law and the state and federal constitutions. The  
18 conduct of a compliance check using a minor operative is no different than any other  
19 undercover law enforcement operation that uses an operative or informant. The use of decoys  
20 or informants to afford a person with opportunity to violate the law has long been upheld by  
21 Washington courts as a viable and legally permissible law enforcement technique. *See Gray*,  
22 69 Wn.2d 432; *State v. Emerson*, 10 Wn. App. 235, 242, 517 P.2d 245 (1973); *City of Seattle*  
23 *v. Gleiser*, 29 Wn.2d 869, 189 P.2d 967 (1948); *see also Playhouse Inc. v. Liquor Control*  
24 *Board*, 35 Wn. App. 539, 667 P.2d 1136 (1983) (where the court held in the context of liquor  
25 enforcement officer enforcing Board rules: "deceitful practices . . . including the use of  
26

1 | undercover agents and limited police participation in unlawful enterprises, are not  
2 | constitutionally prohibited.”).

3 | Here, the Licensees were cited for violations of RCW 66.44.270(1) and RCW  
4 | 66.44.310(1)(a) after Enforcement conducted compliance checks at the Licensees’ premises.  
5 | The statutes in Title 66 RCW provide the Board authority to enforce these provisions and to  
6 | employ liquor enforcement officers to enforce the liquor laws and rules. The enforcement  
7 | method used in the instant cases--the use of a minor decoy to afford the licensees an  
8 | opportunity to obey or violate the law--is fully supported by Washington case law.

9 | **III. CONCLUSION**

10 | The Licensees’ Petitions for Reconsideration do not advance any new arguments or  
11 | cite to any new, relevant legal authority not previously considered by the Board. The  
12 | Licensees seek merely to reargue a position already taken in their Petitions for Review.  
13 | Therefore, Enforcement respectfully requests that the Board deny the Licensees’ Petitions for  
14 | Reconsideration.

15 | DATED this 2nd day of September, 2010.

17 | ROBERT M. MCKENNA  
18 | ~~Attorney General~~

*Gordon P. Kang WSBA #37170*

*for:*

19 | \_\_\_\_\_  
20 | BRIAN J. CONSIDINE, WSBA #39517  
21 | Assistant Attorney General  
22 | Attorneys for Enforcement