

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

LA BARCA, INC  
d/b/a JUAN COLORADO MEXICAN  
RESTAURANT  
8709 14<sup>TH</sup> AVE S  
SEATTLE, WA 98108

LICENSEE

LICENSE NO. 077501

LCB NO. 23,562

OAH NO. 2010-LCB-0002

FINAL ORDER OF THE BOARD

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

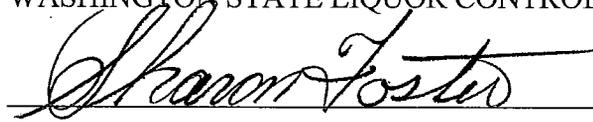
1. The Liquor Control Board issued a Statement of Intent to Renew Liquor License dated September 9, 2009 held by La Barca, Inc. d/b/a Juan Colorado Mexican Restaurant.
2. The city of Seattle timely objected to the renewal of the liquor license, asserting that chronic illegal activity was associated with this establishment and its patrons.
3. John A. McGoodwin, Assistant City Attorney represented the city of Seattle. Brian Considine, Assistant Attorney General, represented the Education and Enforcement Division of the Board. The Licensee was represented by Theresa L. Griffin, Attorney at Law.
4. An administrative hearing was held on August 16, 2010 before Jane Cantor Shefler, Administrative Law Judge, Office of Administrative Hearings in Seattle, Washington.
5. On October 4, 2010, Administrative Law Judge Jane Cantor Shefler entered her Findings of Fact, Conclusions of Law and Initial Order in this matter, which affirmed the license renewal.
6. No petitions for review were filed by the parties.

7. 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 that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board and that the license renewal for La Barca, Inc d/b/a Juan Colorado Mexican Restaurant located at 8709 14<sup>th</sup> Avenue South in Seattle, Washington, License 077501 is hereby renewed.

DATED at Olympia, Washington this 2 day of November, 2010.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b)

serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

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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November 3, 2010

Theresa L. Griffin, Attorney for Licensee  
445 SW 152<sup>nd</sup> St  
Burien, WA 98166-2208

La Barca, Inc., Licensee  
d/b/a Juan Colorado Mexican Restaurant  
8709 14<sup>th</sup> Ave S  
Seattle, WA 98108-4808

John A. McGoodwin, City Attorney  
PO Box 94667  
Seattle, WA 98124-4667

Captain Joseph Kessler (City of Seattle)  
Southwest Precinct Commander  
Seattle Police Dept.  
PO Box 34986  
Seattle, WA 98124-4986

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

**RE: FINAL ORDER OF THE BOARD**  
**LICENSEE: La Barca, Inc.**  
**TRADENAME: Juan Colorado Mexican Restaurant**  
**LOCATION: 8709 14<sup>th</sup> Ave S, Seattle, WA 98108-4808**  
**LICENSE NO. 077501-2L**  
**LCB HEARING NO. 23,562**  
**OAH HEARING NO. 2010-LCB-0002**

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the Final Order of the Board 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: Beth Lehman, Licensing Supervisor, WSLCB  
PO Box 43076, 3000 Pacific Ave. SE, Olympia WA 98504-3076, (360) 664-1602  
[www.liq.wa.gov](http://www.liq.wa.gov)

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

LCB NOS. 23,562

LA BARCA, INC.  
d/b/a JUAN COLORADO MEXICAN  
RESTAURANT  
8709 14<sup>TH</sup> AVE S  
SEATTLE, WA 98108-4808

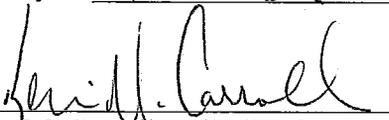
DECLARATION OF SERVICE BY  
MAIL

LICENSEE

LICENSE NO. 077501-2L

I declare under penalty of perjury under the laws of the state of Washington that on November 3, 2010, I served a true and correct copy of the FINAL ORDER OF THE BOARD in the above-referenced matter, by placing a copy of said documents in the U.S. mail, postage prepaid, to all parties or their counsel of record.

DATED this 3<sup>rd</sup> day of November, 2010, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator

LA BARCA, INC., LICENSEE  
d/b/a JUAN COLORADO MEXICAN  
RESTAURANT  
8709 14<sup>TH</sup> AVE S  
SEATTLE, WA 98108-4808

THERESA L. GRIFFIN, ATTORNEY FOR  
LICENSEE  
445 SW 152<sup>ND</sup> ST  
BURIEN, WA 98166-2208

CAPTAIN JOSEPH KESSLER (CITY OF  
SEATTLE)  
SOUTHWEST PRECINCT COMMANDER  
SEATTLE POLICE DEPT.  
PO BOX 34986  
SEATTLE, WA 98124-4986

BRIAN CONSIDINE, ASSISTANT  
ATTORNEY GENERAL, GCE DIVISION  
OFFICE OF THE ATTORNEY GENERAL  
1125 WASHINGTON STREET SE  
PO BOX 40100  
OLYMPIA, WA 98504-0100

JOHN A. MCGOODWIN, CITY ATTORNEY  
PO BOX 94667  
SEATTLE, WA 98124-4667

DECLARATION OF SERVICE BY  
MAIL

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of the Renewal of the  
077501-2L Liquor License authorizing the  
privileges as a Spirits, Beer, Wine (SBW)  
Restaurant Service Bar of:

LA BARCA, INC. d/b/a  
Juan Colorado Mexican Restaurant,

Licensee.

OAH Docket No.: 2010-LCB-0002

**MAILED**

Agency No. 23,562

**OCT 04 2010**

**SEATTLE-OAH**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW and  
INITIAL ORDER**

**Translation into Spanish**

If you need an oral translation of this Order into Spanish, you may contact PATRICIA VALDESUSO, Interpreter, at 425-973-0002. Ms. Valdesuso may only translate this Order; she cannot provide any legal counsel or representation.

Pursuant to due and proper notice to all interested parties, a hearing was held in the above-entitled matter before Jane Cantor Shefler, Administrative Law Judge, Office of Administrative Hearings, at Seattle, Washington, on August 16, 2010.

The Appellant City of Seattle appeared and was represented by John A. McGoodwin, Assistant City Attorney. The Liquor Control Board, Licensing & Regulation Division, appeared and was represented by Brian J. Considine, Assistant Attorney General.

The Licensee, LA BARCA, INC. D/B/A JUAN COLORADO MEXICAN RESTAURANT, also appeared, represented by Alma Jimenez, Owner, and the Licensee's counsel, Theresa L. Griffin, Attorney at Law.

Alan E. Rathbun, Director, Liquor Control Board, Licensing & Regulation Division, appeared and presented testimony on behalf of the Liquor Control Board.

FINDINGS OF FACT  
CONCLUSIONS OF LAW and  
INITIAL ORDER

Page 1 of 10

Office of Administrative Hearings  
One Union Square, Suite 1500  
600 University Street  
Seattle, WA 98101-3126  
Tel: (206) 389-3400  
Fax: (206) 587-5135

**RECEIVED**

**OCT 05 2010**

**LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION**

Susan Reams, License Manager, Liquor Control Board, Licensing & Regulation Division, appeared by telephone conference and presented testimony on behalf of the Liquor Control Board.

Patricia Valdesuso, Interpreter, was also present, providing a simultaneous translation of the proceedings into Spanish.

Department Exhibits 1 through 5 were admitted at hearing.

The hearing was digitally recorded. The record was closed on August 16, 2010. Subsequently, the Administrative Law Judge discovered that approximately the first 1.5 hours of the hearing had not been properly recorded and/or preserved on a compact disc (CD). Missing from the record are the introductory information concerning hearing process, procedure and appeal rights, opening statements by counsel, and a portion of the testimony of Susan Reams, License Manager, Liquor Control Board, Licensing & Regulation Division. The recording begins during the middle of the cross-examination of Ms. Reams by John A. McGoodwin, Assistant City Attorney, City of Seattle.

By Order Reopening Hearing dated August 19, 2010, the testimony of Ms. Reams was retaken via telephone conferencing on August 26, 2010. Present on August 26, 2010, by telephone conferencing, were Brian J. Considine, Assistant Attorney General, John A. McGoodwin, Assistant City Attorney, Theresa L. Griffin, Attorney at Law, and Susan Reams. This portion of the hearing was also digitally recorded. Based upon the review of the record, it appears to the Administrative Law Judge that Ms. Reams' testimony was properly recorded and preserved in its entirety. The record was closed on August 26, 2010.

### **STATEMENT OF THE CASE**

On September 9, 2009, Alan E. Rathbun, Director, Licensing & Regulation Division, Washington State Liquor Control Board ("LCB-Licensing") issued a Statement of Intent to Renew Liquor License, held by LA BARCA, INC. D/B/A JUAN COLORADO MEXICAN RESTAURANT ("Juan Colorado" or "licensee").

The City of Seattle ("City") timely objected to the renewal of the liquor license, asserting that chronic illegal activity in areas near the restaurant is associated with this establishment and its patrons. Subsequent to the issuance of the Statement of Intent, the City submitted a request for an administrative hearing.

Prior to hearing, the City submitted as proposed exhibits certain documentation and testimony concerning criminal activity not originally submitted to LCB-Licensing.

Through a Motion in Limine, LCB-Licensing sought to restrict the admission of any documents which were not originally provided with the City's objection to the license renewal. LCB-Licensing also sought to limit the scope of or exclude the testimony of several potential City witnesses. By Decision on Motion in Limine, dated August 2, 2010, LCB-Licensing's Motion was granted.

At issue is whether LCB-Licensing properly acted properly within its discretion when it issued the Statement of Intent to Renew Liquor License No. 077501-2L, authorizing the privilege as a Spirits, Beer and Wine Restaurant Service Bar to LA BARCA, INC., D/B/A JUAN COLORADO MEXICAN RESTAURANT.

Based upon the evidence presented, the undersigned administrative law judge makes the following:

### ***FINDINGS OF FACT***

1. The liquor license authorizing the privileges as a Spirits, Beer, Wine (SBW) Restaurant Service Bar issued to Juan Colorado was due to expire on March 31, 2009. Pursuant to standard procedures, the City of Seattle (the City) was notified that the license was due for renewal.
2. By letter of Seattle Captain Joseph Kessler, Southwest Precinct Commander, Seattle Police Department, dated February 17, 2009, the City timely submitted an objection to the possible renewal of the liquor license. Exhibits 3-1 - 3-7. Included with the City's objection were 17 incident reports, for the period beginning February 16, 2008 through September 8, 2009. Exhibits 3-8 - 3-196.
3. The City's objection was initially investigated by Susan Reams, License Manager, Licensing & Regulation Division. Her investigation included a review of the LCB violations in the two years' previous. There were only two citations, one for the sale to a person underage and the other for an employee drinking on duty. In both instances, the fines were paid. There were no tobacco violations on record. Exhibit 2-2.
4. Ms. Reams also reviewed the incident reports and learned that many of the incidents occurred in the parking lots or alley adjacent to or near Juan Colorado. She investigated the

lease to the licensee's premises and met with the landlord. Through this portion of the investigation, she learned that the lease does not include the adjacent parking lot, nor the parking lot across the alley. She concluded that "the licensee is not in control of the parking lots where the city alleges incidents occurred that they claim are related to the establishment." Exhibits 2-1 - 2-2.

5. Rex Prout, Deputy Director of the Enforcement Division, also reviewed the City's objection, together with the multiple incident reports. Based upon his review, Mr. Prout recommended approval of the license. Exhibit 2-2.

6. At the conclusion of her investigation, Ms. Reams recommended to Alan Rathbun, Director, Licensing and Regulation Division, that the liquor license be approved:

Although the city of Seattle objections lists multiple reports of incidents in the vicinity of Juan Colorado and nearby parking lots, and arrests on area streets for DUI, the incidents submitted cannot be reasonably linked to the establishment. In fact, many of the incident reports submitted by the city occurred in a parking lot across the alley of the establishment and are clearly not within the control of the licensee. It appears that although the city submitted incidents as complaints to the Liquor Control Board, our Enforcement division was unable to substantiate liquor violations in relation to complaints the city submitted against the licensee.

Exhibit 2-1.

7. Mr. Rathbun independently reviewed the recommendation for approval submitted by Ms. Reams. He reviewed the incident reports. He noted that several of the arrests near the licensee's establishment were warrant arrests, with no connection to the restaurant. See, Exhibits 3-105 through 3-110; 3-119 through 3-123; 3-124 through 3-134; and 3-143 through 3-147. He also noted that several of the incidents were reported by the owner of Juan Colorado. See, Exhibits 3-19 through 3-27; 3-48 through 3-73; and 3-74 through 3-82. Mr. Rathbun concluded that incident reports showed evidence of a bad neighborhood, frequented by known criminals, but that there was no direct nexus linking the neighborhood activity to the licensee's establishment.

8. In reaching his decision to approve the renewal of the liquor license, Mr. Rathbun also considered the recommendation of the Enforcement Division and the licensee's response to the City's objections. Exhibit 1-3; see also, Exhibit 4.

## **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to chapters 66.24, 34.12 and 34.05 RCW, and chapters 10-08, 314-09, and 314-12 WAC.
2. Proceedings involving agency action are adjudicative proceedings under chapter 34.05 RCW. The Liquor Control Board ("Board") has authority to assign such proceedings to an administrative law judge pursuant to chapter 34.12 RCW. The Board has authority to convene a formal hearing subject to the provisions of Title 34 RCW either before or after disposition of the application. See RCW 66.24.010(8). A proper hearing was provided in this case.
3. RCW 66.08.010 provides that Title 66 RCW shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose.
4. As a licensed retail seller of liquor, the licensee is subject to the jurisdiction of the Board. The license is subject to the conditions and restrictions imposed by Title 66 RCW. RCW 66.24.010(6). The Board has authority to grant or deny a retail liquor license. RCW 66.24.010(2).
5. The city or town in which a licensee operates is entitled to notice of all license applications within its geographic boundaries and may file written objections to the application. RCW 66.24.010(8).
6. The issuance of liquor licenses is governed by RCW 66.24.010. RCW 66.24.010(2) provides, in pertinent part, "The board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in the objections submitted ...."
7. Any written objections submitted to the Board "shall include a statement of all facts upon which such objections are based." RCW 66.24.010(8)(d).
8. RCW 66.24.010(12) provides:

In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county

legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

9. The City argues that LCB-Licensing abused its discretion when it issued the Statement of Intent to Renew the liquor license for Juan Colorado by failing to give substantial weight to the City's objections as required by RCW 66.24.010(12). The City further argues that the Board had a duty to independently investigate any prior criminal activities which were alluded to within the incident reports provided.

10. The Board maintains that RCW 66.24.010(12) requires a threshold showing of chronic illegal activity before it must give substantial weight to the City's objections. Because the evidence provided by the City was insufficient to show a "pervasive pattern" of chronic illegal activity directly linked to the licensee, the Board argues that it need not meet "substantial weight" standard.

11. An abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *Preset v. Am. Bankers Life Assurance Co.*, 79 Wn. App. 93, 97, 900 P.2d 595 (1995), *review denied*, 129 Wn.2d 1007 (1996).

12. Standards for judicial review of decisions of an administrative nature are set forth in the Administrative Procedures Act, RCW 34.05.570(4)(c):

Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion ... can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

13. In *Hayes v. Yount*, 87 Wn.2d 280, 286, 286, 552 P.2d 1038 (1976), the court held:

[Administrative decisions] are to be affirmed unless the administrative findings, conclusions, or decisions are "clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or . . . arbitrary or capricious." RCW 34.04.130(6)(e), (f); *Department of Ecology v. Ballard Elks Lodge* 827, 84 Wn.2d 551, 555, 527 P.2d 1121 (1974); *Stempel v. Department of Water Resources*, 82 Wn.2d 109, 113-14, 508 P.2d 166 (1973). Agency action is "arbitrary or capricious" if there is no support in the record for the action which is therefore "wilful and unreasoning action, in disregard of facts and circumstances." *Northern Pac. Transp. Co. v. State Util. & Transp. Comm'n*, 69 Wn.2d 472, 478, 418 P.2d 735 (1966). Under the more rigorous "clearly erroneous" standard agency action may be reversed where the reviewing court is firmly convinced that a mistake has been committed, even though there is evidence supporting the action. *Ancheta v. Daly*, 77 Wn.2d 255, 260, 461 P.2d 531 (1969). 86 Wn.2d 233, 235, 543 P.2d 343 (1975).

14. Based upon the record herein, LCB-Licensing did not abuse its discretion when it issued the Statement of Intent to Renew the liquor license for Juan Colorado. The City did not prove that the Board's decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. The City did not establish that the Board acted unconstitutionally, beyond the scope of its authority, or arbitrarily or capriciously.

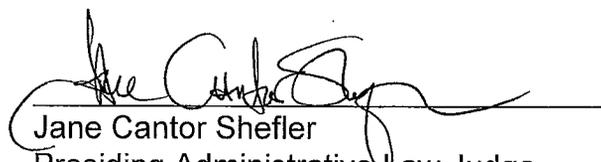
15. In its investigation of the City's objections, the documentary evidence submitted by the City was reviewed by three persons (Susan Reams, License Manager, Rex Prout, Deputy Director of the Enforcement Division, and Alan Rathbun, Director, Licensing and Regulation Division). Each came to the same conclusion -- that the evidence submitted did not show a pervasive pattern of chronic illegal activity directly tied to the actions of the licensee. Under RCW 66.24.010(8)(d), the Board is not mandated to independently supplement the

documentary evidence submitted by the entity objecting. Through its investigation, LCB-Licensing gave substantial weight to the objections of the City, and properly exercised its discretion to approve the renewal of the liquor license at issue.

**Now therefore it is ORDERED:**

The action of the Liquor Control Board-Licensing in the issuance of the Statement of Intent to Renew Liquor License No. 077501-2L, authorizing the privilege as a Spirits, Beer and Wine Restaurant Service Bar to LA BARCA, INC., D/B/A JUAN COLORADO MEXICAN RESTAURANT IS **AFFIRMED**.

Dated and mailed at Seattle, Washington on October 4, 2010.

  
Jane Cantor Shefler  
Presiding Administrative Law Judge

**NOTICE TO PARTIES**

All parties hereto may file a Petition for Review of the initial order with the Liquor Control Board within TWENTY (20) days of the date of service of the Initial Order. RCW 34.05.464, WAC 10-08-211, and WAC 314-42-095.

**The Petition for Review must:**

- (i) Specify the portions of the initial order to which exception is taken;
- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the Liquor Control Board within TWENTY (20) days of the date of service of the initial order.

A copy of the Petition for Review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within TEN (10) days after service of the Petition for Review, any of the other parties may file a response to that petition with the Liquor Control Board. WAC 314-42-095. Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the Initial Order, and any exceptions filed by the parties will be circulated to the Board members for review. WAC 314-42-095.

Following this review, the Liquor Control Board will enter a final order. WAC 314-42-095(4). Within TEN (10) days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470; WAC 10.08.215.

The final decision of the Liquor Control Board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598.

**Certificate of Service**

Findings of Fact, Conclusions of Law, and Initial Order was mailed on 10/04/10, 2010, to the following parties:

La Barca, Inc.  
Juan Colorado Mexican Restaurant  
8709 14th Ave S  
Seattle, WA 98108-4808

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Griffin Law Offices  
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