

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

CHAVEZ, MAGANA & MAGANA, A  
PARTNERSHIP d/b/a  
MAGANA'S GOLDEN NUGGET  
218 S 4<sup>TH</sup> AVE  
PASCO, WA 99301-5509

LICENSEE

LICENSE NO. 081946-4F  
AVN 4J1051A

LCB NO. 23,826

OAH NO. 2011-LCB-0031

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 complaint dated May 16, 2011, alleging that on February 20, 2011 the above-named Licensee, or an employee thereof, permitted the removal of liquor in an open container from the licensed premises, contrary to WAC 314-11-065(2).
2. A prehearing conference was scheduled for June 16, 2011 at the licensee's timely request for a formal administrative hearing.
3. The Licensee did not appear for the prehearing conference nor request a continuance. Assistant Attorney General Brian Considine represented the Enforcement Division of the Board.
4. On June 17, 2011, Administrative Law Judge Randolph Bolong issued his Order of Default due to the appellant's failure to appear, ordering that the penalties assessed for the above citation stand.

5. A notice of appearance was filed on June 17, 2011 and a motion to vacate the default was filed in June 28, 2011 by the Licensee's attorney Karla Kane with the Office of Administrative Hearings (OAH).

6. OAH scheduled a motion hearing for August 4, 2011 at 4:30 p.m. at which no representative for the Licensee appeared.

7. On August 15, 2011, Administrative Law Judge Randolph Bolong issued his Order on Motion to Vacate which denied the request to vacate the default order of June 17, 2011.

8. On December 13, 2011, Administrative Law Judge Randolph F. Bolong issued his Findings of Fact, Conclusions of Law and Initial Order on Default, affirming the Default Order mailed June 17, 2011.

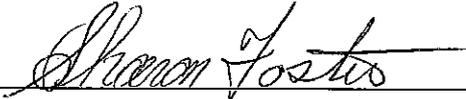
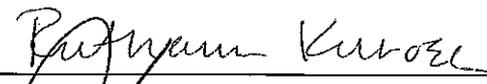
9. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE; IT IS HEREBY ORDERED that the default order for case 23,826 is adopted. IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,826 is sustained and that the liquor license privileges granted to Chavez, Magana and Magana, A Partnership d/b/a Magana's Golden Nugget at 218 S 4<sup>th</sup> Avenue in Pasco, Washington, License 081946, 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 two-hundred fifty dollars (\$250.00) due within 30 days of this order. If timely payment is not received, suspension will take place from 11:00 a.m. on March 6, 2012 until 11:00 a.m. on March 11, 2012. 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 10<sup>th</sup> day of JANUARY, 2012.

WASHINGTON STATE LIQUOR CONTROL BOARD

  
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\_\_\_\_\_  
  
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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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January 11, 2012

Karla Kane, Attorney for Licensee  
621 W Clark St  
Pasco, WA 99301-5523

Chavez, Magana & Magana-A Partnership, Licensee  
d/b/a Magana's Golden Nugget  
417 S 6<sup>th</sup> St  
Sunnyside, WA 98944

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

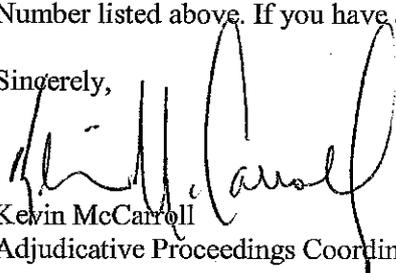
**RE: FINAL ORDER OF THE BOARD**  
**LICENSEE: Chavez, Magana & Magana-A Partnership**  
**TRADE NAME: Magana's Golden Nugget**  
**LOCATION: 218 S 4<sup>th</sup> Ave, Pasco, WA 99301**  
**LICENSE NO. 081946-4F**  
**ADMINISTRATIVE VIOLATION NOTICE NO: 4J1051A**  
**LCB HEARING NO. 23,826**  
**OAH NO. 2011-LCB-0031**  
**UBI: 601 967 234 001 0001**

Dear Parties:

Please find the enclosed Declaration of Service by Mail and a copy of the Final Order of the Board in the above-referenced matter.

**The applicable monetary penalty is due by February 10, 2012 or suspension will take place on the dates indicated in the order.** The address for payments is WSLCB, P.O. Box 43085, Olympia, WA 98504-3085. Please label the check with your License Number and Administrative Violation Notice Number listed above. If you have any questions, please contact me at (360) 664-1602.

Sincerely,

  
Kevin McCarroll  
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Spokane and Pasco Enforcement and Education Divisions, WSLCB  
Teresa Young, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

CHAVEZ, MAGANA & MAGANA-A  
PARTNERSHIP d/b/a  
MAGANA'S GOLDEN NUGGET  
218 S 4<sup>TH</sup> AVE  
PASCO, WA 99301

LCB NO. 23,826  
OAH NO. 2011-LCB-0031

DECLARATION OF SERVICE BY MAIL

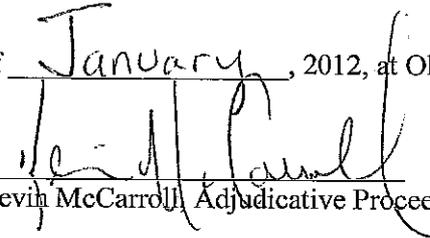
LICENSEE

LICENSE NO. 081946-4F  
AVN NO. 4J1051A

I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for Licensees, by Campus Mail for the Office of Attorney General, on the date below to:

KARLA KANE, ATTORNEY FOR LICENSEE 621 W CLARK ST PASCO, WA 99301-5523	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION BRIAN CONSIDINE, ASSISTANT ATTORNEY GENERAL
CHAVEZ, MAGANA & MAGANA-A PARTNERSHIP, LICENSEE d/b/a MAGANA'S GOLDEN NUGGET 417 S 6 <sup>TH</sup> ST SUNNYSIDE, WA 98944	

DATED this 11<sup>th</sup> day of January, 2012, at Olympia, Washington.

  
Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY MAIL

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

IN THE MATTER OF:

CHAVEZ, MAGANA AND MAGANA,  
A PARTNERSHIP d/b/a  
MAGANA'S GOLDEN NUGGET

APPELLANT/LICENSEE

License No. 081946  
AVN No. 4J0304A, 4J1051A, 4J1062A

**OAH DOCKET NO.** 2011-LCB-0030,  
2011-LCB-0031, 2011-LCB-0032  
**LCB No.** 23,800, 23,826, 23,829

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND INITIAL ORDER ON  
DEFAULT**

**STATEMENT OF THE CASE**

Pursuant to notice duly given, an administrative motion hearing was held before Randolph F. Bolong, duly appointed Administrative Law Judge, on December 2, 2011. The hearing was conducted by telephone conference call from Yakima, Washington, in the matter of three administrative complaints against the Appellant, Chavez, Magana and Magana, a partnership, dba Magana's Golden Nugget, alleging violations of the Washington State Liquor Act. The Liquor Control Board, Enforcement and Education Division (Enforcement), was represented by Stephanie Happold, Assistant Attorney General. Magana's Golden Nugget, LLC, was represented by Karla Kane, Attorney at Law. Prior to the motion hearing, Enforcement filed a Motion in Limine, requesting that Exhibit A, offered by the Appellant for her motion, be excluded. The motion was denied.

Initial Order on Default  
Page 1  
Operator: RK

**RECEIVED**

DEC 22 2011

Liquor Control Board  
Board Administration

The Administrative Law Judge, having considered the entire record in this proceeding, including the arguments of the respective representatives, now enters the following findings of fact.

### **FINDINGS OF FACT**

1. On May 16, 2011, the Washington State Liquor Control Board's Education and Enforcement Division (Enforcement) filed three administrative complaints with the Office of Administrative Hearings (OAH) against the Appellant, alleging violations of the Washington State Liquor Act .

2. On June 2, 2011, a Notice of Prehearing Conference (Notice) was issued by OAH. The telephonic prehearing conference was scheduled for 4:30 p.m., on Thursday, June 16, 2011. The Notice informed the Appellant that he should call OAH ten minutes prior to the scheduled prehearing conference. The Notice informed the Appellant that any party who failed to attend or participate in the hearing could be held in default pursuant to RCW 34.05.440.

3. A review of the record indicates that OAH had not received notice that the Appellant was represented at that time, and the Notices were sent to the Appellant and Enforcement.

4. On or about May 1, 2011, the Appellant retained Karla Kane, Attorney at Law. Ms. Kane sent her letter of representation to Enforcement by certified mail, requesting a copy of all discovery and correspondence on the matter.

5. On June 9, 2011, Ms. Kane became aware that Assistant Attorney General Brian Considine was involved in this matter. She e-mailed him regarding her notice of

appearance and informed him that she had not received anything on the case. At that time, he indicated that Enforcement had not received her notice of appearance. He did not inform her of the prehearing conference. After their discussion, Ms. Kane sent a fax of her notice of appearance to OAH. A review of the record does not indicate that a notice of appearance was received by OAH on that date.

6. On June 16, 2011, Enforcement appeared telephonically at the designated time. The Appellant did not appear. Enforcement moved for default.

7. On June 16, 2011, the Appellant/Partner, Jose Chavez, had appeared at the law office of Ms. Kane, but was told that there was no hearing scheduled. The Appellant's attorney had not been informed that a prehearing conference was to be held on that date. He did not press the matter or call OAH, but returned the next day to his attorney's office. On June 17, 2011, when Ms. Kane learned of the prehearing conference the previous day, Ms. Kane contacted Mr. Considine and was informed of the default. She faxed the copy of her notice of appearance to OAH.

8. On June 17, 2011, an Order of Default was issued from OAH defaulting the Appellant for failing to appear at the June 16, 2011, prehearing conference.

9. Appellant, through his attorney, filed a Motion to Vacate Default on or about June 28, 2011.

10. Pursuant to the request to vacate the Order of Default, a motion hearing was initially scheduled on July 14, 2011, later continued to August 4, 2011, at 4:30 p.m. A Notice

of Continuance of Motion to Vacate Order of Default Hearing by Telephone was mailed on July 13, 2011, for the August 4 conference.

11. On August 4, 2011, OAH staff noted that Enforcement and the Spanish language interpreter had called OAH to register their appearance; staff did not note an appearance by the Appellant. A telephone call was placed at approximately 4:45 p.m. to Ms. Kane's office and a message was left by the undersigned. When no return call was received from the Appellant, Enforcement moved for denial of the motion to vacate.

12. On August 5, 2011, staff retrieved a telephone message left by Ms. Kane the prior evening at 5:03 p.m., inquiring whether someone was going to call her and providing a new telephone number.

13. An Order on Motion to Vacate was issued on August 15, 2011, denying the request to vacate and affirming the Order of Default.

14. On August 17, 2011, Ms. Kane indicated by letter that she had received the Order on Motion to Vacate and was requesting reconsideration. She argued that she had placed two calls to OAH at 4:20 and 5:03 p.m. on August 4, 2011, and would be obtaining records of her telephone calls to OAH.

15. Evidence obtained by Ms. Kane from Qwest, her telephone service provider, indicates that she placed telephone calls to OAH at 4:19 p.m. and 4:20 p.m. to OAH's regular and toll-free numbers, respectively. She placed another two calls to OAH's telephone numbers at 5:01 p.m.

## CONCLUSIONS OF LAW

1. If the licensee or permit holder under the authority of the Liquor Control Board requests an administrative hearing, it is conducted pursuant to chapter 34.05 Revised Code of Washington (RCW). Washington Administrative Code (WAC) 314-42-051(1).

2. When a party fails to appear at the scheduled time for a hearing or other stage of an adjudicative proceeding, the presiding officer may issue a default or other dispositive order. RCW 34.05.440(2).

3. In this case, there are two incidents of default that must be considered, on June 16 and August 4, 2011.

4. In considering the request to vacate the default orders, the appealing party must establish good cause. There is no specific standard in this type of case, so guidance is provided in Civil Rule 55(c)(i). If good cause is established under CR 55(c)(i), the default order may then be set aside pursuant to Civil Rule 60(b).

5. In administrative hearings, evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1). In the matter of the August 4, 2011, hearing, the document from the Appellant's phone provider is supported by OAH staff's mention that the Appellant had left a message soon after 5 p.m. indicating that she had previously called OAH. The undersigned concludes that the Appellant has established sufficient good cause to vacate the Order on Motion to Vacate, and will consider vacating the Default Order.

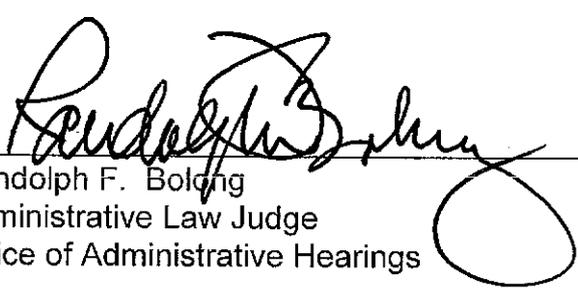
6. With regard to the June 16, 2011, default, a party must file a written motion requesting that the order be vacated, and stating the grounds relied upon, within seven days after service of a default order. RCW 34.05.440. "Service," means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company. RCW 34.05.010(19).

7. In this case, the Appellant had notice of the default prior to the entry of the order on June 17, 2011. The Default Order itself was served on June 17, 2011. The Appellant filed the written request to vacate the June 17, 2011 order on June 28, 2011. Because the motion requesting vacation of the order was not filed within seven days after service of the Default Order, the undersigned has no jurisdiction to consider the motion to vacate the June 17, 2011 Default Order. The Default Order cannot be vacated.

### **DECISION**

The Default Order mailed June 17, 2011, is AFFIRMED. The undersigned has no jurisdiction to vacate the default.

**Dated** at Yakima, Washington this 13th day of December 2011.

By   
Randolph F. Boldig  
Administrative Law Judge  
Office of Administrative Hearings

Copies mailed to:

Jose Chavez, Respondent  
Karla Kane, Respondent Rep  
Brian Considine, AAG  
Centerpoint Language Services Inc.  
Kevin McCarroll, Washington State Liquor Control Board

### NOTICE TO PARTIES

Either the licensee or permit holder or the assistant attorney general 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 and 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 (10) ten 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(2)(a) and (b). 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, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten 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 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

**MAILED**

AUG 15 2011

**YAKIMA OAH**

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

In the Matter of:

CHAVEZ, MAGANA and MAGANA, a  
partnership dba MAGANA'S GOLDEN  
NUGGET

214 South 4<sup>th</sup> Avenue  
Pasco, WA 98301

Licensee

License No. 081946  
AVN No. AJ1062A

OAH Nos. 2011-LCB-0030, 2011-LCB-  
0031 and 2011-LCB-0032

LCB No. 23,829

23,826

ORDER ON MOTION TO VACATE

**RECEIVED**

AUG 17 2011

LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

On June 2, 2011, a Notice of Prehearing Conference was mailed to the Licensee and to the Department, to appear on Thursday, June 16, 2011, at 4:30 p.m. The Licensee failed to appear and was declared in default. An Order of Default was issued June 17, 2011, in each docket. The Licensee was advised that within seven days it could file a request that the orders be vacated.

By facsimile on June 17, 2011, Kane Law PLLC filed a notice of appearance on behalf of Jose Chavez. The letterhead lists her telephone number as (509) 545-4646.

On June 28, 2011, OAH received from Karla Kane, attorney, a Motion to Vacate Default, which was postmarked June 27, 2011.

On June 29, 2011, OAH issued a Notice of Motion to Vacate Order of Default Hearing by Telephone, for Thursday, August 4, 2011, at 8:15 a.m. The Notice was mailed the Licensee and to Ms. Kane, the attorney for Mr. Chavez (one of the partners).

**Instructions for Telephone Hearings:** the Motion Hearing will be conducted by telephone conference call. Please call ten (10) minutes prior to the above-scheduled time at (509) 249-6090 or toll free 1-800-843-3491. Calls from telephone booths, cell phones and cordless phones are discouraged as they are often not reliable for conducting conference calls. After the parties have called in, the Administrative Law Judge will call the parties back to begin the conference call.

**Failure to Appear:** Parties who fail to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with RCW 34.05.440.

The Department moved to continue, Ms. Kane indicated no objection but had some trials coming up and wanted to make sure she was available. The parties agreed to July 26, only to learn the judge was not available. AAG Considine then provided six available days in August 2011, and August 4, 2011 at 4:30 was available on the ALJs calendar.

A second notice was issued July 13, 2011, setting the motion hearing for Thursday, August 4, 2011, at 4:30 p.m.

The Department appeared but neither the Licensee, any individual partner, nor attorney Kane appeared. The ALJ telephoned the law office of Ms. Kane and left a message, indicated that a default would be issued if no contact by close of business at 5:00 p.m. Mr. Considine requested that the motion to vacate the earlier order of default be denied. No appearance or response was received by 5:00 p.m.

On August 5, 2011, staff retrieved a telephone message left by Ms. Kane the prior evening at 5:03 p.m., inquiring whether someone was going to call her and providing a new telephone number of (206) 850-4455. OAH staff maintain a daily template registering each party to call in and appear and had registered only the Spanish language interpreter and Mr. Considine.

The Licensee has failed to show good cause for failure to appear at the motion hearing.

IT IS ORDERED, ADJUDGED AND DECREED that the request to vacate is denied and the Order of Default mailed June 17, 2011 is affirmed.

Dated and Mailed this 15<sup>th</sup> day of August, 2011 at Yakima, Washington.

  
\_\_\_\_\_  
Randolph Bolog  
Administrative Law Judge  
Office of Administrative Hearings  
32 North 3rd Street, Ste 320  
Yakima, WA 98901  
(509) 249-6090, or 1-800-843-3491  
FAX: (509) 454-7281

Mailed to the following:  
Chavez, Magana and Magana, a Partnership, Licensee  
Karla Kane, Licensee attorney  
Brian Considine, AAG

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

In Re:

JOSE CHAVEZ, dba Magana's Golden  
Nugget,

Appellant.

Docket No. 2011-LCB-0031  
LCB case No. 23,826

**ORDER OF DEFAULT**

RECEIVED

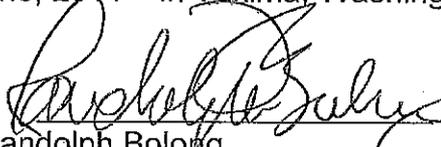
JUN 20 2011

LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION

THIS MATTER having come on regularly to be heard before the undersigned Administrative Law Judge on June 16, 2011, and the department appearing, and the Appellant, Jose Chavez, not appearing,

AN ORDER OF DEFAULT is entered herein, and the penalties assessed for the above citations stand.

Dated and Mailed this 17<sup>th</sup> day of June, 2011 in Yakima, Washington.

  
Randolph Bolong  
Administrative Law Judge  
32 North Third St, Ste. 320  
Yakima, WA 98901  
(509) 249-6090, 1-800-843-3491  
FAX: (509) 454-7281

cc:

Jose Chavez, dba Magan's Golden Nugget, Appellants  
Brian Considine, AAG  
Pat Wilson Parmer, Chief

**NOTICE TO THE PARTIES:** Within seven days after the date of this order, the defaulting party may file a written motion at the address listed below the Administrative Law Judge's signature, requesting that the order be vacated, and stating the grounds relied upon. RCW 34.05.440(3).