BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: OLUT INC d/b/a TAILGATOR 1805 HEWITT AVE EVERETT, WA 98201-3610 LICENSEE LICENSE NO. 352513-3F AVN NO. 3F3103A	LCB NO. 24,755 OAH NO. 2013-LCB-0031 FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated May 20, 2013, alleging that on April 13, 2013, the above-named Licensee or employee(s) thereof gave, sold, and/or supplied liquor to a person(s) under the age of twenty-one (21), in violation of RCW 66.44.270(1) and WAC 314-11-020(1).
2. The Licensee made a timely request for a hearing.
3. An administrative hearing was held on November 4-6, 2013 before Administrative Law Judge Lisa N.W. Dublin with the Office of Administrative Hearings.
4. At the hearing, Assistant Attorney General Kim O'Neal represented the Education and Enforcement Division of the Board and Attorney James H. Johanson represented the Licensee.
5. On January 3, 2014 Administrative Law Judge Lisa N.W. Dublin entered her Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
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 the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board,

IT IS HEREBY ORDERED that the liquor license privileges granted to Olut Inc d/b/a Tailgator, located at 1805 Hewitt Avenue in Everett, Washington, License No. 352513, 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 ($500) due within 30 days of this order. If timely payment is not received, the suspension will take place from 11:00 a.m. on Thursday, March 27, 2014 until 11:00 a.m. on Tuesday, April 1, 2014. 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
Financial Division
PO Box 43085
Olympia, WA 98504-3085

DATED at Olympia, Washington this 4th day of February, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthelyn Kurose

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

February 5, 2014

Jim Johanson
Johanson Law Group
7009 212th Street SW #203
Edmonds, WA 98026-7742

Boe Lindgren
Olut Inc
d/b/a Tailgator
4411 California Ave SW
Seattle, WA 98116-4108

Kim O'Neal, 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: Olut Inc
TRADE NAME: Tailgator
LOCATION: 1805 Hewitt Ave, Everett, WA 98201
LICENSE NO. 352513
LCB HEARING NO. 24,755
OAH NO. 2013-LCB-0031
AVN NO. 3F3103A
UBI: 602 905 720 001 0001

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter. **The applicable monetary penalty is due by March 7, 2014. If payment is not timely, then suspension will take place during the dates noted in the order.**

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

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Mt. Vernon Enforcement and Education Division, WSLCB
Jamie Marshall, WSLCB Enforcement

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: OLUT INC d/b/a TAILGATOR 1805 HEWITT AVE EVERETT, WA 98201-3610 LICENSEE LICENSE NO. 352513 AVN NO. 3F3103A	LCB NO. 24,755 OAH NO. 2013-LCB-0031 DECLARATION OF SERVICE BY MAIL

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 applicants and licensees, by campus mail for state offices, on the date below to:

JIM JOHANSON JOHANSON LAW GROUP 7009 212TH STREET SW #203 EDMONDS, WA 98026-7742	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
BOE LINDGREN OLUT INC d/b/a TAILGATOR 4411 CALIFORNIA AVE SW SEATTLE, WA 98116-4108	

DATED this 5th day of February, 2014, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

RECEIVED
JAN 16 2014
Liquor Control Board
Board Administration

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

In The Matter Of: **OLUT, INC.,** **LICENSE NO. 352513** **AVN NO.: 3F3103A** **Appellant.**	**OAH Docket No. 2013-LCB-0031** **LCB No. 24,755** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER**

I. ISSUES PRESENTED

1.1 On or around April 13, 2013, did Appellant and/or it employee(s) serve alcohol to a person under the age of twenty-one (21), in violation of RCW 66.44.270 and WAC 314-11-020?

1.2 If so, what is the appropriate penalty?

II. ORDER SUMMARY

2.1 On or around April 13, 2013, Appellant and/or its employees served alcohol to persons under the age of twenty-one (21), in violation of RCW 66.44.270 and WAC 314-11-020.

2.2 The appropriate penalty is $500.00 in lieu of a 5-day suspension.

III. HEARING

3.1 **Hearing Date:** November 4-6, 2013[1]

3.2 **Administrative Law Judge:** Lisa N. W. Dublin

3.3 **Appellant:** Olut, Inc., dba Tailgator (herein "Tailgator")

3.3.1 **Representative:** James H. Johanson, Esq.

3.3.2 **Witnesses:**

[1] The hearing in this matter took place concurrently with the hearing on OAH Case Nos. 2013-LCB-0032 and 2013-LCB-0057.

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Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

3.3.2.1 Boe Lindgren, owner

3.3.2.2 Gabrielle Burton, bartender

3.4 **Agency:** Liquor Control Board ("Board")

3.4.1 **Representative:** Kim O'Neal, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Roxanne "Dee" Johnson, Liquor Enforcement Officer

3.4.2.2 Mark Shipman, Liquor Enforcement Officer

3.4.2.3 Brian Maine, Investigative Aid

3.4.2.4 Joe Singer, Investigative Aid

3.5 **Exhibits:** Board Exhibits 1-25, as well as Appellant's Exhibit 1, were admitted into the record.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On or around April 19, 2013, Liquor Enforcement Officer Roxanne (Dee) Johnson served Administrative Violation Notice (AVN) No. 3F3103A on Boe Lindgren, Owner of Appellant.

4.2 On or about April 29, 2013, Mr. Lindgren requested an administrative hearing.

Tailgator

4.3 Tailgator is a restaurant/lounge located in Everett, Washington that is licensed with the State of Washington to serve spirits, beer and wine. Mr. Lindgren has owned Tailgator since approximately 2009. In September 2011, Mr. Lindgren obtained his advanced certificate in the ServSafe Alcohol Responsible Alcohol Service Training and Certification Program, with a 100% score on the subject of "Checking IDs". Ex. 5, p.5.

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4.4 In approximately July 2010, the Board cited Tailgator for allowing an apparently intoxicated person to possess or consume liquor, in violation of State law. Following an administrative hearing, this violation was upheld, and Tailgator paid $500.00 in lieu of a 5-day suspension. Ex. 1. One year later, in approximately July 2011, the Board cited Tailgator for disorderly conduct. Tailgator did not contest this citation, and paid $500.00 in lieu of a 5-day suspension. *Id.* There is no evidence of a prior citation against Tailgator for serving alcohol to minors.

Service to Minors

4.5 On the night of Saturday April 13, 2013, LCB Enforcement Officers Dee Johnson and Mark Shipman picked up Investigative Aides Brian Maine and Joseph Singer from their homes, and brought them to the Monroe police station for briefing. Both Mr. Maine and Mr. Singer were age 18. Exs. 18 and 20. Officer Johnson and Officer Shipman took steps to ensure that the only identification Mr. Maine and Mr. Singer had with them was their state driver's license. Officers Johnson and Shipman took pictures of Mr. Maine and Mr. Singer, and gave them money to use during compliance checks that night.

4.6 Later that night, Officers Johnson and Shipman drove to Everett, where they parked near Tailgator. Officer Shipman then followed Mr. Maine and Mr. Singer from a distance as they made their way up to the Tailgator doorman. Mr. Maine and Mr. Singer presented their driver's licenses to the doorman, who checked them and accepted payment of the cover charge. Mr. Maine and Mr. Singer then entered Tailgator, and sat at a table near a window across from the bar. *See* Appellant's Ex. 1. Officer Shipman likewise gained entrance to Tailgator, and sat in view of Mr. Maine and Mr. Singer.

4.7 When no one came to the boys' table to take their order, Mr. Maine and Mr. Singer approached the bar and ordered a beer. The bartender did not check their identification. The bartender gave them two glasses of beer, and accepted payment. They then took the beer back to their table. *Id.*

4.8 Officer Shipman observed the transaction, and contacted Officer Johnson, who left the parked car and entered Tailgator. Officer Johnson or Officer Shipman gave Mr. Maine and Mr. Singer the car keys, and Mr. Maine and Mr. Singer then left Tailgator. Officer Johnson took the glasses of beer from the table, approached the bartender, and asked the bartender if she served them to the boys. The bartender admitted she had done so. The bartender had not checked their identification because she relied on the doorman to ensure that those admitted to Tailgator were of legal drinking age.

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4.9 In the following days, Officers Johnson and Shipman each prepared a report regarding the above-described incident. Exs. 12 and 13. On April 19, 2013, Officer Johnson served Mr. Lindgren with an Administrative Violation Notice (AVN) for selling or serving alcohol to persons under the age of 21, in violation of RCW 66.44.270 and WAC 314.11.020(1). Ex. 10.

4.10 At the hearing, Tailgator took issue with Officer Johnson's report of the above-described incident, claiming it was not credible for a number of reasons. First, it alleged that the bartender served the boys a glass of beer and a bottle of beer, not two glasses of beer as she had testified. Second, the Snohomish County Superform Officer Johnson completed contained a similar discrepancy, and was not dated as required by RCW 9A.72.085. *See* Ex. 14. However, Tailgator does not dispute it served Mr. Maine and Mr. Singer beer, regardless of form. In addition, Tailgator's Exhibit 1 clearly shows the bartender served the boys two glasses of beer, as Officer Johnson testified. Officer Shipman's incident report, along with the written statements of Mr. Maine and Mr. Singer, also support the fact that Tailgator served them beer on or around April 13, 2013. Exs. 13, 17 and 19.

4.11 Tailgator also alleged that Mr. Maine and Mr. Singer were of legal drinking age, and/or that they may have used a different identification to gain entrance to Tailgator than the identification on record. *See* Exs. 18 and 20. However, Tailgator produced no evidence to support these speculative allegations. Tailgator alleged that Officer Johnson may not have checked the boys' pockets at the Monroe police station sufficiently to ensure they had only their state-issued driver's license on their persons. However, the weight of the evidence establishes that Mr. Maine and Mr. Singer were in fact under age 21 on April 13, 2013, and presented no identification other than their official state driver's license to the Tailgator doorman that night.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under WAC 314-29-010(1)(c); chapter 34.05 RCW, and chapter 10-08 WAC.

Tailgator served alcohol to minors in violation of state law.

5.2 It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to

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consume liquor on his or her premises or on any premises under his or her control. RCW 66.44.270(1); WAC 314-11-020(1).

5.3 The weight of credible evidence establishes that on or around April 13, 2013, Tailgator's bartender served Mr. Maine and Mr. Singer, both under the age of 21, alcoholic beverages. Consequently, Tailgator violated RCW 66.44.270 and WAC 314-11-020.

Penalty

5.4 Serving alcohol to minors in violation of RCW 66.44.270 is a Group 1 violation against public safety. WAC 314-29-020. Group 1 violations are considered the most serious because they present a direct threat to public safety. The penalty for a first violation of RCW 66.44.270 is a five-day license suspension or $500.00 monetary fine. *Id.* This is Tailgator's first violation of RCW 66.44.270, and an inadvertent one given Tailgator made a good faith effort to comply with RCW 66.44.270 by checking Mr. Maine's and Mr. Singer's identification at the door prior to their entry. Consequently, Tailgator should pay $500.00 in lieu of a 5-day license suspension.

INITIAL ORDER

IT IS HERBY ORDERED THAT:

Tailgator violated RCW 66.44.270 in serving underage persons alcohol on or around April 13, 2013. Because this is a first violation of this kind for Tailgator, Tailgator is required to pay a $500.00 penalty under WAC 314-29-020.

Signed and Issued at Tacoma, Washington, on January 3, 2014.

Lisa N. W. Dublin
Administrative Law Judge
Office of Administrative Hearings

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NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order

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; 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(2)(a) and (b). Copies of the reply must be mailed to the all other parties and their representatives at the time the reply is filed.

Address for filing a petition for review with the board:

Washington State Liquor Control Board
Attention: Kevin McCarroll
3000 Pacific Avenue, PO Box 43076
Olympia, Washington 98504-3076.

Final Order and Additional Appeal Rights: 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 with the board, stating the specific grounds upon which relief is granted. RCW 34.05.470; 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).

CERTIFICATION OF MAILING IS ATTACHED

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949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

Certificate of Service – OAH Docket No. 2013-LCB-0031 and 2013-LCB 0032

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Olut Inc. **dba Tailgator** **1805 Hewitt Avenue** **Everett, WA 98201**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Olut Inc. **dba Tailgator** **4411 California Avenue SW** **Seattle, WA 98116-4108**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Jim Johanson **Johanson Law Group, Inc.** **7009 – 212th Street SW #203** **Edmonds, WA 98026**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Kim O'Neal **Assistant Attorney General** **Office of the Attorney General** **Government Compliance & Enforcement Div.** **PO Box 40100** **Olympia, WA 98504-0100**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt
Kevin McCarroll **Adjudicative Proceedings Coordinator** **Washington State Liquor Control Board** **P.O. Box 43076** **Olympia, WA 98504-3076**	☒First Class US mail, postage prepaid ☐Certified mail, return receipt ☐Campus Mail ☐Facsimile ☐1st Class, postage prepaid, Certified mail, return receipt

Date January 3, 2014

Cyndi Michelena
Office of Administrative Hearings

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