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EXPEDITE
 Hearing is set
Date:
Time:
Judge/Calendar: Judge

THURSTON COUNTY SUPERIOR COURT

SEATTLE EVENTS, a Washington Nonprofit Corporation, MULTIVERSE HOLDINGS, LLC, a Washington Limited Liability Company, and UNIVERSAL HOLDINGS, LLC, a Washington Limited Liability Company,

Plaintiffs,

v.

STATE OF WASHINGTON, The WASHINGTON STATE LIQUOR AND CANNABIS BOARD (WSLCB), an agency of the State of Washington, and the members of the WSLCB, JANE RUSHFORD, OLLIE GARRETT, RUSS HAUGE, in their official capacities only, and RICK GARZA, Director of the WSLCB, in his official capacity, only,

Defendants.

NO. 19-2-02827-34

SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

PLAINTIFFS SEATTLE EVENTS, a Washington Nonprofit Corporation, MULTIVERSE HOLDINGS, LLC and UNIVERSAL HOLDINGS, LLC, through their attorneys, Fred Diamondstone and Douglas Hiatt, allege:

I. INTRODUCTORY STATEMENT

1.1 This lawsuit is brought by Plaintiffs to enjoin the WASHINGTON STATE

1 LIQUOR AND CANNABIS BOARD (WSLCB) from restricting or interfering with issue
2 oriented and educational speech and advocacy activity, not consisting of advertising for
3 business or promoting consumption or use of particular products, at the 28th annual Seattle
4 Hempfest “Protestival,” currently being planned for August 2019 in Seattle.

5 City parks are quintessential public forums that have been recognized as free speech
6 areas under the Washington and federal constitutions, for time immemorial. The Washington
7 Constitution and the U.S. Constitution indisputably protect the right of the people to gather
8 signatures on initiatives and to petition for redress of grievances.

9 As alleged in the Factual Section of this Complaint, Section IV below, despite
10 SEATTLE EVENTS’ efforts to establish a proper dialogue with WSLCB in the fall of 2018,
11 and despite an initial face-to-face meeting with key WSLCB enforcement staff in January
12 2019 and requests for further dialogue, the WSLCB embarked on a campaign on April 9,
13 2019 to actively dissuade licensed marijuana business from participating at Seattle Hempfest
14 by issuing vague and confusing pronouncements that have the effect of intimidating licensed
15 marijuana businesses from participating at Seattle Hempfest and from supporting the
16 Hempfest “Protestival,” through messages that suggest that licensees can and will be cited for
17 violating “advertising” regulations, which can result in fines, penalties and even loss of
18 licenses.

19 Accordingly, Plaintiffs bring this action to enjoin the WSLCB from enforcing
20 statutory restrictions on “advertising” in an unconstitutional manner that would interfere with
21 issue oriented advocacy and public education.

22 II. PARTIES

23 2.1 Plaintiff. SEATTLE EVENTS is a Washington Nonprofit Corporation in
24 good standing, with principal offices and place of business in King County, Washington does
25 business as Seattle Hempfest. SEATTLE EVENTS and its predecessors have produced
26 Seattle Hempfest, an annual “Protestival” free speech event in Seattle, King County

1 Washington for more than 25 years. Seattle Hempfest is the leading “Hempfest” type of
2 event, worldwide.

3 2.2 Plaintiff. MULTIVERSE HOLDINGS, LLC, is a Washington LLC in good
4 standing, with principal offices and place of business in King County, Washington.
5 MULTIVERSE HOLDINGS, LLC does business as WSLCB licensed “I-502” marijuana
6 retailer.

7 2.3 Plaintiff. UNIVERSAL HOLDINGS, LLC, is a Washington LLC in good
8 standing, with principal offices and place of business in King County, Washington.
9 UNIVERSAL HOLDINGS, LLC does business as WSLCB licensed “I-502” marijuana
10 retailer.

11 2.4 Defendant. The STATE OF WASHINGTON authorizes marijuana businesses
12 and has statutes that regulate such business and marijuana advertising, as well as “signs.”

13 2.5 Defendant. The WASHINGTON STATE LIQUOR AND CANNABIS
14 BOARD (WSLCB) is a state agency that administers Washington’s liquor and cannabis laws
15 and regulates “advertising” and “signs” by licensed marijuana businesses, including
16 producers and retailers. “Advertising” is a legislatively and regulatorily undefined term.

17 2.6 Defendant. JANE RUSHFORD is a member of the WSLCB and is sued in
18 her official capacity, only

19 2.7 Defendant. OLLIE GARRETT is a member of the WSLCB and is sued in her
20 official capacity, only

21 2.8 Defendant. RUSS HAUGE is a member of the WSLCB and is sued in his
22 official capacity, only

23 2.9 Defendant. RICK GARZA is the Director of the WSLCB and is sued in his
24 official capacity, only.

25 III. JURISDICTION AND VENUE

26 3.1 Jurisdiction. This court has personal and subject matter jurisdiction. RCW

1 34.05.510 and 66.08.100.

2 3.2 Venue. Venue is properly in Thurston County. RCW 34.05.514 and RCW
3 66.08.100.

4 3.3 Standing. Plaintiffs have standing as they are adversely affected and/or
5 aggrieved by agency action that (a) has prejudiced them or is likely to prejudice them, (b) has
6 been and is being undertaken with conscious awareness that the First Amendment rights and
7 Washington State Const. Art. 1, Sec. 1, 4 and 5 rights of Plaintiffs are being violated, and (c)
8 that can only be addressed by an injunction in Plaintiffs' favor. RCW 34.04.530. A
9 permanent injunction, or the striking of the unconstitutional provisions concerning marijuana
10 advertising found in RCW 69.50.369 and WAC 314-55-155, is the only remedy.

11 3.4 Exhaustion of Remedies. Exhaustion of administrative remedies is not
12 required. RCW 34.05.534 (1) and (2). Further, Plaintiff SEATTLE EVENTS is not subject
13 to any procedures under the APA, since Plaintiff SEATTLE EVENTS is not a WSLCB "I-
14 502" licensee. Further, as alleged below at ¶ 4.3 and ¶ 4.4, because SEATTLE EVENTS has
15 made repeated efforts to work with the WSLCB in an effort to resolve the issue, including by
16 meeting with the WSLCB and the WSLCB's agreement to set up a future meeting with its
17 Attorney General, which it willfully failed to do for months, until the Board took adverse,
18 unilateral action, without notice. Accordingly, this Court should relieve Plaintiffs of any
19 requirement to exhaust any administrative remedies that Defendant WSLCB may identify, in
20 accordance with RCW 34.05.534 (3)(a), (b), or (c). Most importantly, the issues raised
21 involve violations of constitutional rights guaranteed to plaintiffs under the First Amendment
22 and Art. 1, 4, and 5 of the Washington Constitution. These deprive Plaintiffs MULTIVERSE
23 and UNIVERSAL of their free speech rights, for which there is no administrative remedy
24 available, and, therefore, no exhaustion requirement.

25 IV. FACTS

26 4.1 Seattle Hempfest. Seattle Hempfest has occurred for the past 28 years, as a

1 “Protestival” that provides opportunities for activists locally, state-wide, nationally and
2 internationally to exchange information and organize to reform marijuana laws, as well as to
3 celebrate the culture associated with hemp products. In recent years, Seattle Hempfest has
4 been attended by approximately 100,000 attendees, annually. Speakers have included
5 Washington State Rep. Roger Goodman, former Seattle Mayor Murray, Seattle City Attorney
6 Pete Holmes. Former Washington State Rep. and current King Co. Council Member Jeanne
7 Kohl-Welles, Former (then-current) Congressman Dana Rohrbacher, former U.S. Senator
8 Mike Gravel, Rick Steves (of Rick Steves’ Europe), and hundreds of marijuana law reform
9 advocates from a variety of communities, including lawyers, physicians, the marijuana
10 patient community, the industrial hemp business community, and the licensed marijuana
11 industry here in Washington state. Hempfest was a venue where Initiative 502 was
12 vigorously debated in 2012, on both sides. Hempfest continues to be a venue where reform
13 activists gather to discuss movement goals including

- 14 • De-schedule cannabis completely off the federal schedule/Controlled Substances Act
- 15 • Release non-violent cannabis prisoners
- 16 • Vacation of records of cannabis convictions
- 17 • Legalizing home grows
- 18 • Fair, reasonable zoning for marijuana (I-502) businesses
- 19 • Tax and banking law reform for marijuana businesses (e.g. 26 USC §280E [IRS Code
20 provision, disallowing business deductions]; e.g. HR 1595 [116th Congress, 2019-
21 2020, to create protections for depository institutions that provide financial services to
22 cannabis-related legitimate business and service providers to those businesses])

23 Seattle Hempfest, as a “Protestival,” also includes music at multiple stages, forums, and
24 booths for hundreds of vendors, ranging from jewelers, to glass blowers, to food, and to
25 advocacy organizations, such as the ACLU, League of Women Voters (for voter
26 registration), and NORML (National Organization for Reform of Marijuana Laws). During

1 the event, the City of Seattle and the Port of Seattle historically grant to SEATTLE EVENTS
2 the exclusive use of the Myrtle Edwards Park and Centennial Park, respectively, and
3 SEATTLE EVENTS anticipates that similar permits and licenses will again be issued for
4 August 16, 17 and 18, 2019.

5 4.2 Free Speech Has a Price, for Seattle Events d/b/a Seattle Hempfest.

6 SEATTLE EVENTS is required to obtain permits to produce Seattle Hempfest from local
7 governmental agencies, including Seattle Parks and the City Seattle's Special Events
8 Committee, the Port of Seattle, the Seattle-King County Department of Public Health, and
9 other agencies. Permit requirements for sanitation and health, park restoration, first aid
10 requirements, and other obligations, including contractual agreements with the Seattle Art
11 Museum, for the protection of the adjacent Olympic Sculpture Park have brought the
12 production costs of Hempfest approximately \$750,000, annually, over the past three years.
13 These costs are partially paid by donations from attendees, and by contributions from
14 supporters and members and sponsors, many of whom are publicly recognized – not unlike
15 supporters and sponsors of other cultural institutions. Commercial vendors rent space for
16 booths for food sales and other arts and crafts type sales, clothing, and many other types of
17 shopping activities. These vendors are all allowed to advertise their business and brands
18 relatively freely by complying with state and city regulations. The biggest group of
19 advertisers, both potential and actual, are marijuana businesses who wish to advertise and
20 announce their businesses and products and brands. This is especially important in a nascent
21 industry, with each business trying to establish its identity and brand. The advertising
22 restrictions in RCW 69.50.369 and subsequent WAC 314-55-155 destroy the ability of these
23 businesses, including Plaintiffs MULTIVERSE and UNIVERSAL to announce and establish
24 themselves and cripple the ability of Hempfest to provide the best platform for them. The
25 restrictions, as well as the uncertainty of potential citations, fines, and penalties dissuade I-
26 502 licensees from participating at Hempfest. The revenue lost to Hempfest as a result of

1 this unconstitutional ban poses an existential threat to the event and interferes with the
2 federal and state constitutional rights of I-502 licensees including plaintiffs MULTIVERSE
3 and UNIVERSAL, as well as Seattle Events, d/b/a Seattle Hempfest. .

4 4.3 Historic Resolution of the “Advertising” Issue with the WSLCB. Prior to
5 2019, SEATTLE EVENTS and the WSLCB reached agreement in 2016 concerning the
6 scope of WSLCB’s legitimate limitations regarding I-502 licensees’ ability to act as
7 sponsors, as well as their ability to participate at Seattle Hempfest by having booths that
8 disseminated educational and issue-oriented written materials, without advertising products
9 or wares and certainly without selling products, in accordance with (former) RCW
10 69.50.369. *See* Exhibit 1 (letter of Seattle Hempfest attorney Fred Diamondstone, dated
11 April 12, 2016, to Steve Johnson, Deputy Chief, WSLCB Enforcement and Education
12 Division) and Exhibit 2 (Response, dated June 20, 2016, from Justin Nordhorn, Chief,
13 WSLCB Enforcement and Education Division). Seattle Hempfest raised its concerns for a
14 proper balance between WSLCB regulations related to advertising and free speech concerns
15 under the First Amendment, as well as Wash. Const. Art. 1, § 5. As recognized by Chief
16 Nordhorn, in the WSLCB’s 2016 response, WSLCB was “[brought] to look at the differences
17 between advertising and information” and “agree[d] that the use of a business trade name on
18 a booth, or identified as part of a sponsorship level would not constitute a violation of
19 marijuana advertising laws and rules. Therefore, marijuana businesses licensed by the
20 Washington State liquor and Cannabis Board (WSLCB) can use tradename/business names
21 at the event without the need for required marijuana warnings, as required on product
22 advertising.” (Exhibit 2).

23 This historical solution did not resolve the unconstitutional and overbroad limits on
24 marijuana advertising found in RCW 69.50.369 and WAC 314-55-155. These include the
25 advertising ban applied to city parks, and other regulations related to brand and product and
26 other forms of advertising found in the RCW and WAC, as well as the unsupported and

1 overbroad 1,000 foot provision, which is factually and legally unsupported by evidence with
2 respect to public interests served, such as youth use, and which includes large sections of
3 downtown Seattle and other major venues within the City of Seattle. There are no legislative
4 findings that support a rational, legitimate state interest and no data to support that any of
5 these impermissible regulations achieve such an interest.

6 4.4 2018 and 2019 Outreach from Seattle Events d/b/a Seattle Hempfest to
7 WSLCB. On November 29, 2018, WSLCB enforcement officers Capt. Tim Thompson and
8 Lt. Josh Bolender attended a Seattle Special Events Committee Review (De-Brief) of
9 Hempfest 2018. Following that meeting, Seattle Hempfest representatives and the WSLCB
10 officers conferred and a follow up email was sent to propose and set a meeting to discuss
11 areas of mutual concern. Subsequently, SEATTLE EVENTS' representatives and counsel
12 met with Deputy Chief Johnson, Capt. Thompson and other WSLCB officials, including
13 Enforcement Advertising Coordinator Matt McCallum, on January 23, 2019 and discussed
14 issues of mutual concern including advertising and the nature of Hempfest as a
15 constitutionally protected 1st Amendment event. (WSLCB Meeting Notes Hempfest 2019,
16 attached as Ex. 3.) The WSLCB Minutes identify "actions to complete." The first action was
17 to set a meeting 2 to 3 weeks later with legal representation from both parties to discuss legal
18 issues, including the "legal definition of advertising-vs-informational," as well as the *Central*
19 *Hudson* test. (See *Central Hudson v. Public Serv. Comm'n. of New York*, 447 U.S. 557
20 (1980).) The second action was set a meeting in 1 to 2 months to discuss other issues. The
21 third action was to "continue to meet with Hempfest organizers to provide information and
22 educational resources." None of those actions took place in the three months following
23 January 23, 2019, despite follow up requests from legal counsel for SEATTLE EVENTS on
24 February 5, 2019 (Exhibit 4) March 18, 2019 (Exhibit 5) and April 4, 2019 (Exhibit 6).

25 4.5 WSLCB Campaign in April 2019 to Actively Dissuade and Prevent Licensed
26 Marijuana Business from Participating at Seattle Hempfest. On April 3, 2019, the WSLCB

1 Executive Management Team participated in a public meeting, at which Enforcement Chief
2 Nordhorn singled out inquiries from Seattle Hempfest and stated that WSLCB planned to
3 advise licensees that they could not have “any sign ... in a public park ... admission to which
4 is not restricted to persons aged twenty-one years or older.” (*Emphasis added*) On April 9,
5 2019, WSLCB Enforcement Advertising Coordinator developed a Bulletin (No. 19-XX)
6 (attached as Ex. 7 quoting RCW 69.50.369(1), as amended in 2017, as meaning that licensees
7 “cannot directly or indirectly be responsible for the placing of a sign or advertisement for
8 marijuana businesses...” at “these events,” referring to summer events held in city parks, an
9 implicit reference to Seattle Hempfest. The proposed Bulletin also contained the cryptic and
10 confusing message that “This does not prohibit licensees from attending or having
11 noncommercial messaging as long as that message does not reference or otherwise promote
12 the marijuana licensed business or its products.” Subsequently, on April 17, 2019, the
13 Bulletin was actually issued as Bulletin 19-01 (attached as Exhibit 8), with revised language
14 that continues to prohibit any direct or indirect signage for marijuana businesses and that
15 continues to contain cryptic and confusing language that “Licensees may attend these events
16 or have a non-commercial sign as long as the licensee and/or the message does not reference
17 or otherwise promote a marijuana licensed business or its products.” Subsequent to the filing
18 of the Complaint and the [First] Amended Complaint, Defendant WSLCB issued a
19 superseding Bulletin, #19-03, which was filed with the Court as an attachment to a Stipulated
20 order on July 22, 2019. Plaintiffs allege that the prohibitions on speech under Bulletin
21 #19-03 and RCW 69.50.369 and WAC 314-55-155 require businesses to avail themselves of
22 only noncommercial messages and unconstitutionally restrict the commercial free speech
23 rights of plaintiffs MULTIVERSE and UNIVERSAL, directly, and the free speech interests
24 of Hempfest, as alleged in parag. 4.2, above.

1 4.6 Bad Faith. Only after Defendant WSLCB issued Administrative Bulletin 19-
2 01 on April 17, 2019, did it subsequently propose on April 24, 2019 to meet with SEATTLE
3 EVENTS, a bad-faith gesture in light of the events alleged in ¶ 4.4 and ¶ 4.5, above.

4 4.7 Impact on Licensees. Plaintiffs MULTIVERSE HOLDINGS, LLC and
5 UNIVERSAL HOLDINGS, LLC are licensed marijuana retailers doing lawful business in
6 accordance with I-502 and RCW 69.50.325 *et seq.* MULTIVERSE and UNIVERSAL intend
7 to support Seattle Hempfest and intend to have booths at Seattle Hempfest and fear that
8 sponsorship, if referenced in Hempfest’s written materials and./or signage at Hempfest
9 stages, will lead to a citation for violation of WAC 314.55.155 and/or RCW 69.50.369 and
10 potential fines, penalties or even license suspension or revocation. Plaintiffs MULTIVERSE
11 and UNIVERSAL are also unable to determine whether any booth that either may set up at
12 Seattle Hempfest, to disseminate information concerning their support of marijuana law
13 reform, or to educate the public about any effects of marijuana use or consumption, or the
14 history of marijuana use, abuse, and criminalization, can bear their business names, logos, or
15 address, or whether their booth can even identify their names and/or logos, without violating
16 WAC 314.55.155 and/or RCW 69.50.369, insofar as “advertising” and “sign” are both
17 undefined terms under RCW Ch. 69.50, as well as WAC Ch. 314.55. These impacts are not
18 unique to plaintiffs MULTIVERSE and UNIVERSAL and are in fact universal among 502
19 licensees, virtually all of which refused to join this suit for fear of retaliation from the
20 WSLCB. This fear is well founded given the documented problems that exist at the state
21 agency. These plaintiffs stand as representative 502 licensees who seek relief from
22 unconstitutional restraints on both non-commercial as well as commercial speech.

23 4.8 Impact on Seattle Events, d/b/a Seattle Hempfest. Past sponsors have inquired
24 about the status of the WSLCB’s position this year and have advised SEATTLE EVENTS
25 that they are not able to sponsor Seattle Hempfest because of fear of retaliation by WSLCB.
26 There was also a recognition that what was allowed was so unreasonably restricted from a

1 marketing perspective that it did not make business sense to pay and participate. SEATTLE
2 EVENTS' ability to stage this "Protestival" in support of marijuana law reform in the future
3 is at stake, in light of the importance of sponsorships to help meet the costs of the event, as
4 alleged in ¶ 4.2, above.

5 4.9 Excessive Nature of the Ban on Free Speech and Assembly Activity. The
6 statutory and regulatory restrictions of *any* sign in a public park that identifies a licensee,
7 whether directly or indirectly placed, where the park is being exclusively used for this First
8 Amendment and Wash. Const. Art. 1, §1, §4 and §5 protected activity, is excessive,
9 overbroad and unreasonable. The restrictions fail to directly advance government interests in
10 limiting or restricting the use of marijuana by underaged persons, or any other legitimate
11 governmental interests and the restrictions are also more extensive than necessary to serve
12 any legitimate government interest. Further, the restrictions are not narrowly tailored to
13 serve a substantial or compelling governmental interest.

14 4.10 Impermissible Ban on Commercial Speech. The 1,000 foot provision in RCW
15 69.50.369 and in WAC 314-55-155 is neither legally nor factually permissible and neither
16 the Legislature nor the WSLCB has developed any rational, factual basis to establish that the
17 1,000 foot provision is reasonably tailored to achieve a legitimate governmental interest. The
18 1,000 foot provision, especially as applied in a major metropolitan community, is overbroad
19 and geographically overreaching.

20 4.11 Violation of Rights. The actions and omissions by Defendants have
21 proximately caused the denial of Plaintiffs' rights to freedom of speech, freedom to assemble
22 and petition for redress of grievances under the Washington and federal constitutions, U.S.
23 Const. Amend. 1 and Washington Constitution, Article. 1, §§ 1, 4 and 5. Plaintiffs are
24 entitled to declaratory, equitable and injunctive relief.

25 4.12 Necessity for Injunctive and Declaratory Relief. On information and belief,
26 and based on the WSLCB's actions alleged herein, Plaintiffs expect that the WSLCB will

1 continue to take hostile actions in derogation of Plaintiffs’ state and federal constitutional
2 rights and to effectively prevent Seattle Events and its supporters and participants from
3 effectively planning, producing, presenting and participating in future Annual Seattle
4 Hempfest “Protestivals.” Plaintiffs are entitled to declaratory, equitable and injunctive relief.

5 V. CAUSES OF ACTION

6 5.1 Declaratory Relief. Based on the above allegations, this Court should issue
7 declaratory relief pursuant to RCW Ch. 7.24 regarding the 2017 amendment to RCW
8 69.50.369 (1) which contains restrictions concerning “any sign or other advertisement for a
9 marijuana business,” as well as RCW 69.50.369 (7)(b) and (e) provisions with respect to age
10 restrictions related to certain speech, and find those provisions to be unreasonable and/or
11 overbroad restrictions when applied to expressive activity related to political speech and also
12 to certain commercial speech, and prevent the WSLCB and its agents from limiting free
13 speech and assembly in the parks, in violation of the First Amendment, through the
14 WSLCB’s overbroad and unlawful and/or “void for vagueness” regulations on signs and
15 advertising.

16 5.2 Injunction; First Amendment. Based on the above allegations, the Court
17 should enjoin Defendants’ and their agents from proceeding to limit free speech and
18 assembly activity in the parks, in violation of the First Amendment, through the guise of
19 enforcement of vague and/or overbroad regulations and/or statutes restricting expressive
20 activity and conduct, found in RCW 69.50.369 (1) and (7)(b) and (e), and WAC 314-55-155
21 (1)(a)(iii), (1)(b)(i), (2)(a)(i) and (2)(d), in violation of settled federal constitutional law with
22 respect to political speech, as well as in violation of settled constitutional law with respect to
23 the commercial speech.

24 5.3 Injunction; Washington Constitutional Free Speech Rights. Based on the
25 above allegations, to the extent that any and all of the Defendant’s activities have violated or
26 will result in violation of the Washington Constitution’s recognition that political power is

1 inherent in the people, who have rights of Assembly and Free Speech, defendants are in
2 violation of Article 1, §§ 1, 4 and 5 of the Washington Constitution. Plaintiff is entitled to
3 declaratory, equitable and injunctive relief for these state constitutional violations.

4 WHEREFORE, Plaintiff prays for the following relief:

- 5 A. Issuance of a Declaratory Judgment against Defendant;
- 6 B. Issuance of an Injunction against Defendant, as set forth above;
- 7 C. For costs; and
- 8 D. For such other and further relief as this Court deems just and proper.

9 DATED this 8th day of January, 2020.

10 **LAW OFFICES OF**
11 **FRED**
12 **DIAMONDSTONE**

13 

14
15 _____
Fred Diamondstone, WSBA No. 7138

16 **LAW OFFICES OF**
17 **DOUGLAS HIATT**

18 *s/ Douglas Hiatt*

19 _____
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23
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26 Attorneys for Plaintiffs

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DECLARATION OF SERVICE

I, Fred Diamondstone, hereby certify that I have served a true and correct copy of the foregoing *Second Amended Complaint* upon the individual(s) listed below, in the manner noted below:

Jonathan Pitel
Geoffrey Allen
Assistant Attorneys General
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I declare under the penalties of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

SIGNED at Seattle, Washington: January 8, 2020

s/ Fred Diamondstone

Fred Diamondstone