



VIA EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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OAL Reference Attorney and
300 Capitol Mall, Suite 250
Sacramento, CA 95814
E-mail: staff@oal.ca.gov

Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
E-mail: RPU@abc.ca.gov

RE: Comments on the Department of Alcoholic Beverage Control's Proposed Emergency Regulation Procedures for Administrative Actions Against Alcohol Licenses

Introduction – The “Emergency Regulations” are Not Limited to Emergencies, are Not Necessary, Violate the APA and the California Constitution and are an Invitation to Corruption.

This letter comments upon the Department of Alcoholic Beverage Control's (the “ABC”) May 18, 2020 “notice of proposed emergency rulemaking in the alcohol industry due to the COVID-19 pandemic and state of emergency” as transmitted to the Office of Administrative Law (OAL) for adoption.

The rulemaking proposals, if adopted, deny Due Process to licensees, eliminate long established procedural and substantive protections for licensees outlined in relevant and binding statutes and regulations, including the Administrative Procedures Act (“APA”). The proposals are not necessary for the purpose stated and no specific facts or substantial evidence justifying the proposals are provided by the ABC.

The rule proposals confer broad new powers on the ABC not limited to time periods when Shelter-In-Place and similar state-wide or local emergency orders are in effect and not limited to legitimate emergency situations. There is no justification for the invocation of “emergency” powers during the non-emergency situations described in the proposal, and there is no justification for overriding the statutory and administrative due process protections provided to licensees by the California Constitution, the ABC Act, the Government Code and the Administrative Procedure Act solely for the convenience of the ABC.

Sufficient police powers already exist to address any licensee, or any other person, willfully violating any legitimate order of a government authority. Further, the very purpose of the ABC Act, adopted as Article 20, Section 22 of the California Constitution, is thwarted by the proposed adoption of “emergency rules” specifically adopted to permit the ABC to avoid the oversight provided by the discovery, hearing and due process provisions of the Administrative Procedure Act; including oversight by the independent ABC Appeals Board.

The most important original purpose of the ABC Act, and the due process provisions it provided, was to protect licensees and the general public from arbitrary and capricious agency action and exposure to acts of official corruption by those who would use the power and authority of their position to profit from the result. This is not hypothetical. The very creation of the ABC (out of the Board of Equalization) was occasioned by decades of corruption by enforcement authorities vested with power over alcohol licensees. This history is reviewed on the official state Board of Equalization history webpage. That page is attached as Exhibit A.

This is not an historical problem. Exhibit B is a copy of a 2018 U.S. District Court, Central California, Grand Jury Indictment of an ABC District Administrator and a co-conspirator for bribery, extortion and kickbacks by threatening licensees with fictitious violations and the threat of filing Accusations to revoke their licenses. This scheme stretched from 2013 to 2017 and operated because the participants threatened the licensees with violations to extort money and favors while permitting unlawful activity (including prostitution) to occur.

Imagine the power a rogue agent would have if the OAL approves the removal of due process protections and authorizes immediate sanctions for accused (or just investigated and threatened) licensees. The intimidation factor alone vests the individual agents with the virtual power of life and death over alcohol licensees and alcohol businesses. No law enforcement agent should have such unrestrained power and, make no mistake, the "hearing" process in the "emergency" rules is designed in such a way as to make it functionally unavailing to the normal licensee.

There are No Facts or Evidence Cited by the ABC in its Notice - Much Less the "Specific Facts and Substantial Evidence" Required by Government Code Section 11460.20

The ABC has not presented facts or evidence sufficient to show an emergency exists related to ABC enforcement, nor has it demonstrated a need for the immediate adoption of the proposed regulations. The authority cited by the ABC to justify this action, Government Code section 11460.20, does not permit the adoption of these emergency regulations unless the ABC provides ***specific facts and substantial evidence*** of the necessity of the emergency regulation.

The examples in subsection (b) of the proposed regulation describe nothing more than enforcement situations already commonly (and normally) addressed by the ABC in its regular day to day enforcement work across the state. This is reviewed below, example by example.

The ABC's "Factual Basis of the Emergency" is notably lacking specific facts and evidence supporting its finding of an "Emergency" with vague statements such as:

Recently the Department began to receive complaints that some ABC Licensees are disregarding the laws and regulations set by the Department or orders from local officials and are thereby harming the public health, safety and welfare.

...

The delays attendant to the normal administrative disciplinary process would fail to resolve the immediate threat caused by licensee violations of public health orders during the existing declared state of emergency.

...

[A]nd excessively high violation rates being reported.

Government Code 11342.545(b)(2) expressly rejects such general statements as sufficient to support a finding of an emergency: **“A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency.”**

The Cambridge English Dictionary defines “emergency” as: “Something dangerous or serious, such as an accident that happens suddenly or unexpectedly and needs fast action in order to avoid harmful results”.

ABC's vague statement of facts is void of any facts showing that the violation for which ABC states requires emergency action is “sudden” or “unexpected” (or even exists). The first line of enforcement to accomplish compliance with the state and local public health orders lies with local police enforcement; not with the ABC immediately suspending an ABC license.

ABC enforcement agents already cooperate with local police when necessary and respond when requested to enforcement situations. There is no evidence that local police enforcement cannot immediately handle potential or actual violation of stay at home or closure for public health orders.

There is simply no evidence - no studies, no articles, no actual examples- presented showing the justification for stripping licensees of the opportunity to defend themselves against ABC enforcement actions when subsection (b) enforcement offenses are purportedly encountered by ABC investigators. The ABC statements show that the only interests served by the emergency rules are “expediency,” “convenience” and “speculation.” Those interests are not adequate to demonstrate the existence of an emergency.

Subsection (b) Disciplinary Action and Offenses – Why Due Process Matters

ABC disciplinary actions have serious financial impacts on licensees and their employees; penalties can include fines, license suspensions, license revocations and criminal liability. The right of a licensed winery, brewery, distillery, restaurant, hotel, entertainment venue, sports stadium or other licensed business to survive is at stake if their basic right to sell alcoholic beverages is subject to being revoked at the whim of an angry neighbor, overzealous local police department or competitor filing a false or misleading claim on the unlimited grounds listed in the proposed emergency regulations.

Can there be a broader grant of unlimited authority than the ninth (9th) of the proposed emergency regulations?

(9) Any other conduct that has a similar impact on to the public health, safety, and welfare as the foregoing list.

That list, items (1) through (8) on the notice of proposed emergency regulations, are similarly flawed, unnecessary and are not emergencies as required by Government Code 11342.545(b)(2).

Of equal concern is ABC's statement it will soon propose "**how these changes will be made permanent once the COVID-19 pandemic has passed**". First, can there be any better evidence that ABC is simply using the COVID-19 "emergency" to improperly seek to increase its own regulatory power at the expense of licensees' due process rights? Second, there does not appear to be any connection in the actual proposed rule changes to the COVID-19 emergency.

The ABC's right to seek emergency rules at all dates to September 2019 (before COVID-19) when it contemplated how it could use an emergency to increase its power. Well, luckily enough for the ABC it got the emergency it wanted to mask its agenda of doing away with pre-sanction hearing rights, due process and functional ABC Appeals Board oversight.

Consider the nature of each listed offense that would be punishable almost instantly under the emergency regulation (rather than having to be proved as an offense in a hearing where there is pre-hearing discovery, witnesses are subject to cross-examination, and the Judge's ruling is subject to correction on appeal by an appellate body that specializes in ABC regulatory law), how it can be abused and the standard of proof typically required to state a violation:

(b) If occurring on a licensed premises, any adjoining property rented or leased by a licensee, or reasonably connected to the operation of a licensed business, the department has determined the following circumstances constitute an immediate threat to the public health, safety, or welfare that requires immediate administrative action through an emergency decision:

Comment: what does "reasonably connected to the operation of a licensed business" mean? relationships with vendors? actions of employees? actions of service providers? There is no limit on the authority granted here to charge a licensee for responsibility of the actions of others. This is objected to as vague and unintelligible.

(1) The licensee, or an employee or agent of the licensee, sells, or negotiates the sale of controlled substances or dangerous drugs;

Comment: cannabis is a controlled substance. Does this mean a licensee can be shut down if someone employed by a licensee sells, or is involved in the sale of, cannabis off the licensed premises? The ABC regularly charges licensees with a violation for permitting cannabis use on licensed premises but this extends the offense to personal use and sale off the premises.

(2) The licensee, or an employee or agent of the licensee, permits the sale or negotiation for the sale of controlled substances, or dangerous drugs;

Comment: This is even broader than the offense in item (1). This means (under ABC decisional law) that the sale (or offer of sale, that is what "negotiation" means) happened whether the licensee knew about the sale or negotiation, or not. Not trying to prevent a violation is "permission" as far as the ABC is concerned. And, as in (1), this is not limited to activities on the licensed premises.

(3) The licensee, or an employee or agent of the licensee, permits conditions to exist that create an immediate risk of violence against an employee, visitor, guest, or customer of the licensed premises;

Comment: This vague and unintelligible "crime" appears to be aimed at classic "disorderly house" conduct. Loud music, unruly patrons making noise when leaving, excessive calls for police services. This authorizes immediately closing premises where the local police (or neighbors) do not like the crowd attracted to the location. Typically, excessive police call cases turn out to be clashes between restaurant, nightclub or winery owners and neighbors objecting to the entertainment being offered and the patrons attracted to that entertainment. However, accusations have also been used against activities such as unruly wedding parties and tour bus visitors to wineries, breweries or distilleries. The typical result of such actions are conditions on exercising license privileges limiting hours or operation, type of entertainment and number of permitted patrons. The nature and characteristics of these offenses are subject to much dispute between the complaining parties and the licensees and are usually sorted out in the administrative hearing process. These are not emergencies that justify license suspension without full hearing and appeal rights. And, if there is an issue that demands immediate attention local police can stop behavior immediately by issuing a disturbing the peace citation.

(4) The licensee, or an employee or agent of the licensee, engages in or permits activities that directly relate to human trafficking;

Comment: There are few reported human trafficking cases at the ABC level; although if this refers to prostitution cases (which often involve bribery of law enforcement officials, including ABC investigators) those need to be proved as criminal cases before being subject to liability as an ABC matter, and that is not an emergency, and this is exactly the sort of behavior that led to the Grand Jury indictment against ABC personnel in 2018 attached as Exhibit B.

(5) The licensee is convicted of, or pleads guilty to, a crime that reasonably shows the licensee is a danger or immediate threat to employees, visitors, guests, or customers of the licensed premises;

Comment: Conviction of a crime is grounds for suspension or revocation of an ABC license and, typically, all that is required to prove the violation is a copy of the conviction. We presume that the

reference to “danger or immediate threat” might mean conviction for a criminal offense involving assault or battery. If that occurs the ABC licensee should be entitled to defend him or herself at a hearing after full discovery. In no cases could a plea of guilty to such an offense be considered an emergency. However, this ground is so vague it is impossible to ascertain what offense might trigger it.

(6) The licensee, or an employee or agent of the licensee, bribes, or attempts to bribe, a department employee or other public official;

Comment: Bribery of a public official is a serious offense but what bribery is, and how it occurs, is the subject of an entire body of criminal jurisprudence. Is offering a drink to a police officer, or the local Mayor, bribery? How about a campaign contribution? The contribution might be a crime depending on the pre-existing relationship, the nature of what was offered, and the manner offered. This is not an emergency that justifies suspending due process rights and the proof required for a conviction (or a dismissal) that is difficult to obtain and subject to conflicting testimony not suited to abbreviated procedures.

(7) While a license is under suspension, or while an accusation for a violation is pending against a license, a violation of the ABC Act occurring based on conduct like that which is the basis of the suspension, or pending accusation, and is likely to continue or reoccur;

Comment: We think this refers to successive violations for similar conduct; for example, successive sales to minor results in increasing discipline up to an including revocation for a third offense in 36 months. This typically results in sequential discipline but never is an emergency justifying abrogation of due process rights. This may also be conduct related to promotional activity that the ABC has determined is unlawful or the continuance of tied house violations that the licensee believes is permitted and the ABC does not. Having a license suspended while such policies and alleged offenses are being challenged is a complete deprivation of due process. But what is the test for “conduct like that which is the basis of the suspension”? The same charge? This is vague and subject to conflicting interpretations.

(8) The licensee or an employee or agent of the licensee acts in a manner in conflict with limits established by an order of a federal, state, or local official during a state of emergency to protect the public health, safety, and welfare.

Comment: This is a policy that should be enforced by the local police and state officials charged with responsibility for enforcing COVID 19 orders. The nature, scope and interpretation of the orders are subject to much controversy throughout the state and the ABC is singularly unequipped to make such a determination.

(9) Any other conduct that has a similar impact on to the public health, safety, and welfare as the foregoing list.

Comment: Can there be a broader grant of unlimited authority to take whatever action that the ABC wants, without due process, than this?

Punish First – Ask Questions Later, and Ditch the ABC Appeals Board

The rulemaking changes do not protect licensees against charges brought improvidently or wrongfully. Rather, the approach of the Emergency regulations is “punish first” then allow a defense later, after the punishment has been served.

The ABC also obviates the historic, and constitutional oversight role of the ABC Appeals Board, which exists because of excesses of ABC enforcement before the adoption of Article 20, Section 22 of the California Constitution. If the ABC wants to repeal Article 20, Section 22, do it through the legislature and a vote of the people, not through a backdoor “emergency regulation” declaring that every ABC enforcement action is an “emergency.”

THE ABC'S PROPOSED EMERGENCY REGULATION OVERRIDES LONG ESTABLISHED DUE PROCESS PROCEDURES FOR LICENSEES AND OPENS THE POSSIBILITY OF ABUSE OF DISCRETION AND EVEN CORRUPTION FROM “ROGUE” AGENTS

There is no question the ABC has authority to enforce ABC law and regulations. Yet statutes and case law also provide for a “fair trial” and due process for licenses and their employees, including the right to notice, the opportunity to be heard at an open hearing, and the right to cross-examine witnesses. (*See e.g.*, Cal. Civ. Proc. Code § 1094.5; Cal. Government Code §§ 11435.05, 11425.10, 11425.30, 11425.40, 11425.50, 11425.60.)

The proposed Emergency Regulation would bypass these due process safeguards and even more concerning would serve as a first step to convert these “Emergency Regulations” into a permanent erosion of due process.

Under current statutory law, licensees generally are allowed a reasonable time to correct objectionable conditions before the issuance of an accusation requiring a hearing.¹ The proposed Emergency Regulation would eliminate this “correction period” before requiring an immediate hearing to suspend or revoke a license.

Subsections (c) through (o) eliminate all the important due process safeguard procedures in the statutes. The only reason for this is to expedite the proceedings because of some undefined “emergency” rather than requiring filing an accusation, allowing the licensee time to fully respond, holding a noticed hearing, and allowing an appeal to the ABC Appeals Board if appropriate.

¹ Business & Professions Code section 24200.

Subsections (d) and (e) state:

(d) The department in its exclusive discretion shall consider scheduling all Hearings on Emergency Action at a time, including evening hours, and at a place convenient to all parties to the proceeding, including those witnesses required to be present, and the public affected. The hearing may be conducted as an informal hearing using electronic communication by the parties.

(e) If practicable, the department shall give the licensee notice of the Hearing on Emergency Action, whether oral or written, including by telephone, facsimile transmission, or other electronic means. In giving notice, if the department uses a mailing address, phone or facsimile number, or email address which the licensee has placed on file with the department, notice is presumed to be effective.

(Emphasis added).

These sections effectively deny licensees the right to confront witnesses, conduct live cross-examination and (the "*if practicable*" language) even be present at a hearing where their right to continue in business is being adjudicated. These sections are unconscionable violations of Due Process.

Subsection (j) of the proposed Emergency Regulation strips licensees of the right to appeal to the ABC Appeals Board and directs instead that the only appeal may be made to the California Superior Court; which never hears ABC cases and is singularly unprepared to do so.

(j) Any emergency decision issued by the department under this section may only be reviewed by the superior court of the county where the licensed premises is located.

The California Constitution created the ABC Appeals Board to facilitate appeals of ABC decisions affecting licensed businesses:

When any person aggrieved thereby appeals from a decision of the department ordering any penalty assessment, issuing, denying, transferring, suspending or revoking any license for the manufacture, importation, or sale of alcoholic beverages, the [Appeals] board shall review the decision subject to such limitations as may be imposed by the Legislature. CA Constitution, Article 20, section 22.

Both the unreasonable shortening of time and the proposed elimination of the right to appeal a decision to the ABC Appeals Board place unacceptable financial and time burdens on licensees and substantially impinge on licensee's due process rights.

The intent is clear – the ABC wants to make it difficult for licensees to defend themselves. This proposed regulation is even more concerning given the history of agents for administrative

agencies using the power to terminate a license to their own pecuniary advantage. Due process procedures guard against such situations.

THE ABC MUST DEMONSTRATE THE EXISTENCE OF AN EMERGENCY TO JUSTIFY AMENDING EXISTING DUE PROCESS STATUTES

Government Code 11342.545 defines an "emergency" as a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. Under this section, to justify adoption of an emergency regulation, the ABC must present specific facts supported by substantial evidence demonstrating the existence of an emergency and the need for immediate adoption of the proposed regulation.

Government Code section 11346.1(b)(2) further states:

In addition, if the emergency existed and was known by the agency in sufficient time to have been addressed through nonemergency regulations, the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations. **A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency** (*emphasis added*).²

In addition, the ABC must identify each study or report upon which it relies to justify this radical amendment to the due process safeguards for licensees. For a finding of the existence of an emergency to justify amending the statutes, 1 CCR 50(a)(5)(B)(2) requires:

(B) A statement by the submitting agency confirming that the emergency situation addressed by the regulations clearly poses such an immediate, serious harm that delaying action to allow notice and public comment would be inconsistent with the public interest. The statement shall include: ...

2. Specific facts demonstrating by substantial evidence that the immediate adoption of the proposed regulation by the rulemaking agency can be reasonably expected to prevent or significantly alleviate that serious harm. (Emphasis added)

Any emergency regulation may be found invalid if:

(b)(1)The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

² See also, *California Medical Association v. Brian* (1973) 30 Cal.App.3d 637, 657 (fiscal constraints on the DHCS Agency was not sufficient to create an emergency.)

Government Code section 11350(b)(1) (emphasis added).

Here, the ABC has failed to provide sufficient evidence (indeed, any evidence) to support its finding that the proposed Emergency Regulation is reasonably necessary. It also has not shown why the enforcement procedures as outlined in the current statutes are not sufficient to maintain enforcement and why repealing the statutory due process safeguards is necessary.

ABC further submits that the California Legislature has provided the agency with support last year (September 2019) with the passage of SB 788. Section 6 of the Act states:

In order to ensure the Department of Alcoholic Beverage Control's ability to take immediate action when **egregious circumstances** exist that pose an immediate threat to the public's health and safety and to ensure that alcoholic beverage licensees have a right to contest the department's action, it is necessary that this act take effect immediately. (Emphasis added)

However, this provision is impermissibly vague and ambiguous. There is no provision anywhere in the statutes to define what an "egregious circumstance" is and a review of case law suggest a finding of "egregious circumstances" is made on a case-by-case analysis and at the very least is some action that "shocks the conscience".³ Operating a business in violation of a vaguely stated or unclear public health order is not so egregious as to "shock the conscience". Rather it should be the subject of a visit by a health officer and, if necessary, local police.

THE ABC HAS NOT ESTABLISHED THE NEED FOR RULEMAKING CHANGES

The ABC has provided no description of the emergency requiring the proposed amendments to the due process safeguards currently in the statutes. The **only** justification the ABC provides to support these proposed radical amendments to the statutes is found in subsection (a) of the Proposed Emergency Resolution:

(a) The department may issue an emergency decision temporarily suspending a license, temporarily suspending specific licensed privileges, or temporarily imposing conditions on a license in situations involving an immediate threat to the public health, safety, or welfare that requires immediate action, pursuant to the provisions of Article 13 of Chapter 4.5 of the Government Code (commencing with section 11460.10).

One can only assume that the ABC is attempting to use the Governor's COVID-19 emergency declaration as the basis for justifying these proposed amendments. However, even if so, the ABC

³ "Shocks the conscience" is a generic legal phrase describing any circumstance(s) deemed outrageously wrong or unfair when measured by specific criteria. Case law often uses this term in discussing if charged behavior is "egregious" and suggests what "shocks the conscience" is determined on a case by case basis.

must still: (1) present specific facts and evidence explaining why this COVID-19 emergency would justify amending due process safeguards; and (2) because the emergency has existed for many weeks now, explain the department's failure to address the situation through nonemergency regulations. (Government Code section 11346.1(b)(2).)

The ABC has not provided the required written statement with specific facts to support its proposed radical amendments to the due process safeguards in the statutes. No specific facts or circumstances are provided because none exist.

CONCLUSION

The Proposed Emergency Regulations should not, and may not, be adopted. Should the ABC persist in attempting to obviate licensee rights to due process under the guise of addressing COVID-19 concerns just as the Governor is implementing opening protocols in various counties of the state the result will be chaos in the courts, an enormous drain on ABC and licensee resources and a plethora of lawsuits.

This is not the time to do away with administrative due process in the name of expediency and for the convenience of the ABC; especially when the effort is doomed to fail and will only result in the alienation of the licensing community from the ABC.


We finally observe that Section 23001 of the ABC Act states:

*It is hereby declared that the subject matter of this division involves in the highest degree the **economic, social, and moral well-being and the safety of the State and of all its people.** All provisions of this division shall be liberally construed for the accomplishment of these purposes.*

Licensees are people and their economic well-being is one of the core responsibilities of the ABC. The right to due process is a core value that supports the economic, social and moral well-being of the licensees of this state.

Respectfully submitted,

Hinman & Carmichael LLP

By: 

John A. Hinman

EXHIBIT A

Publication 216, *The First 100 Years*

1879-1979

[Foreword \(index.html\)](#) [Contents \(contents.html\)](#) [Board Members \(boardmembers.html\)](#) [Acknowledgments \(acknowledgments.html\)](#)

[Contents \(contents.html\)](#) > [1954 Amendment Relieves Board of Liquor Control](#)
[PREVIOUS \(economic_boom.html\)](#) • [NEXT \(bradley_burns.html\)](#)

1954 Amendment Relieves Board of Liquor Control

A 1954 constitutional amendment signaled the first major piece of legislation affecting the Board of Equalization since the 1930s. This amendment, which was passed on November 2, 1954, transferred the Board's alcoholic beverage licensing and control functions, but not its taxing functions, to the newly created Alcoholic Beverage Control Department effective January 1, 1955.

The 1954 amendment was, in a sense, a welcome relief to the Board Members, who, for the last two decades, had been plagued with accusations and allegations arising from their involvement in liquor control. Many observers felt that the attention the Board had given to liquor control had impeded its effectiveness in other areas. The state's cities called for a constitutional amendment ". . . which would transfer to a state agency having a jurisdiction only over tax matters, responsibility for making assessments for all property within the state subject to the ad valorem tax." ⁹¹

The Board of Equalization had become strongly identified with liquor control. However, almost twenty years earlier, the Board had acknowledged the problems this responsibility might cause, and had suggested from the beginning:

"Whenever a feasible plan is devised to transfer liquor regulation to some other administrative authority, we shall be glad to be relieved of this responsibility. Given to us in 1933 upon the repeal of Prohibition through an amendment of the Federal Constitution, the task of alcoholic beverage control is one of such magnitude as to merit the attention of those who have no other administrative duties to perform." ⁹²

The Board's liquor control functions began after the repeal of Prohibition in 1933 by the U.S. Congress, when the California Legislature assigned liquor control to the Board of Equalization. In addition to collecting the excise taxes on the sale of alcoholic beverages, the Board was also delegated the licensing function. Alcoholic beverage control was assigned to the Board because it was primarily revenue producing. The Board was given its unlimited powers by an amendment to the Constitution in 1934, and in 1935 the Legislature passed

the Alcoholic Beverages Control Act (ABC). California was the only state in which alcoholic beverage control was vested in an agency administered by an autonomous elective board completely independent of control by the Governor and primarily responsible for tax administration. The incongruity of combining liquor control functions with tax administration soon became apparent.

Liquor control developed into a predominantly regulatory and law enforcement function organized as a separate division of the Board. The division chief was the State Liquor Administrator who supervised fourteen district liquor administrators. Board personnel were trained in law enforcement and empowered to gather evidence and make arrests. These police duties plus investigating license applications and conditions of sale of licenses required closer association and cooperation with other law enforcement bodies than with tax collecting agencies. Separate lines of authority were maintained for district tax and district liquor administrators, so that the Board seemed to develop a split personality. Unaccustomed to its strange new policemen's role, the staff of state liquor administrators and agents was incapable of enforcing the ABC Act. Responsibility for policing licensed premises was never properly discharged by either the state's agents or local police authorities, and some premises, reputed to be hangouts for criminal elements, were never investigated and regulated. Some licenses were issued despite objections by local police authorities.

The Board's licensing and policing responsibilities under the ABC Act required more hearings than all of the tax programs it administered; more than 1,800 hearings were held during the 1948-49 fiscal year. Approximately half of these resulted from the denial of license applications, the rest from suspensions or revocations of licenses.

As early as 1936, the Board advised the Legislature in its Biennial Report to Governor Merriam that it would be pleased to relinquish the ABC functions to another duly constituted agency. That request was repeated frequently. The preliminary Griffenhagen Report in 1938 and the final report in 1941 recommended that the ABC function be separated from the Board.

The Board's policy was to issue for each 1,000 population in each county up to one packaged liquor store license (general off-sale) and one general on-sale license for drinking on the premises. The state was soon saturated with premises where alcoholic beverages were sold. Competition among retailers became intense even though prices were governed by fair trade practices imposed on the sale of distilled spirits and wines.

The over-licensing of establishments for the sale of alcoholic beverages had peaked in the early 1950s when Governor Earl Warren appointed Paul Leake to the Board after the death of Jerrold Seawell. Leake opposed the indiscriminate awarding of too many licenses. The maximum number of on-sale and off-sale general licenses had been reached in the late 1940s and no more could be issued until the new population totals could be determined from the 1950 U.S. Census. When 1950 census figures reported that California's

population had grown by 3,679,000, the law authorized the issuance of 3,600 new general on-sale licenses, almost 2,000 of them in southern California—1,300 in Los Angeles County alone. Under pressure to restrict the number of such licenses, however, the Board acted slowly so that the number issued grew very gradually.

After numerous investigations by various committees over the years the Joint Interim Committee on Governmental Reorganization (Assembly Concurrent Resolution 119) appointed a Subcommittee on Alcoholic Beverage Control, chaired by Assemblyman Caspar W. Weinberger, to investigate alcoholic beverage control in California and report to the 1954 Special Session of the State Legislature. The subcommittee's transmittal letter with its comprehensive report to the Senate and Assembly stated:

“We can best summarize our work by saying that we hope that never again will the administration and enforcement standards of any branch of the California State Government be found to be as low as we found to be the case with alcoholic beverage control under the present system. We believe that the recommendations we have made can and will result in substantial improvement if they are enacted this year.”

The subcommittee held meetings in each of the Equalization Districts and in Sacramento from November 1953 through January 1954, and heard testimony from members of the Board of Equalization, legislators, state and district liquor administrators, district attorneys, public health officers, law enforcement officials, and representatives from civic, labor, industry, and professional groups. The committee's primary concerns were: (1) Should liquor control activities be separated from the Board of Equalization? (2) If separated, how should a new agency of alcoholic beverage control be organized? (3) What substantive matters need revision to improve the administration of alcoholic beverage control in the state?

In addition to complaints about misconduct in places that sold liquor, there were charges that on-sale licenses were issued to persons who had no intention of going into the retail liquor business, but who resold those licenses immediately for huge profits. Licenses were issued for addresses where no facilities existed, and on the basis of blueprints for structures that could not possibly have been built on the premises of the listed address (such as between existing structures). The committee found it particularly difficult to determine on what basis licenses were being issued in Los Angeles and San Diego counties.

Although the personal involvement of all the Board Members in liquor control was closely scrutinized, only one was charged with misconduct. William G. Bonelli, elected to the Assembly from southern California in 1930 and Director of the State Department of Professional and Vocational Standards starting in 1934, was appointed to the Board of Equalization in March 1938 by Governor Merriam to succeed Ray Edgar who died in office. Bonelli was to represent the

Fourth Equalization District where most of the alleged irregularities in liquor control were reported.

During his first year on the Board, Bonelli was indicted on bribery charges but was acquitted. He was subsequently reelected to the Board four times. During his fourth term, liquor scandals surfaced in San Diego, Orange, and Riverside counties, which were then part of the Fourth Equalization District. Prior to the 1954 election, Bonelli switched from the Republican to the Democratic party. The liquor scandals grew and focused on Bonelli. He lost the election to Republican Robert E. McDavid, and left immediately for the cattle ranch he owned in his native Arizona. But the controversy did not end with his defeat. On August 20, 1956, the Arizona Supreme Court ordered Bonelli's arrest. He fled to Mexico and refused to return to face charges. He never ceased asserting his innocence. He died in Mexico in 1970.

In 1954 the legislature's Subcommittee on Alcoholic Beverage Control concluded its study of the Board's alcoholic beverage control activities. Sharply critical, the committee urgently recommended the creation of a separate agency to assume liquor control. The legislature submitted a constitutional amendment to the voters at the general election November 2, 1954 to establish a new liquor control agency, to which the Board's duties would be transferred effective January 1, 1955. That measure was overwhelmingly approved by the voters at the same election that brought defeat to William Bonelli. Thus ended the most difficult period in the history of the Board of Equalization.

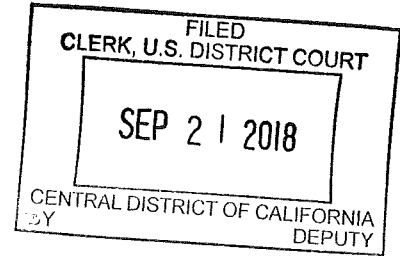
Once relieved of its duties in liquor control, the Board stated that it "welcomes this opportunity to concentrate its attentions on its tax functions. We have always considered these our primary duties, although, by the very nature of the work, alcoholic beverage control has demanded a large share of our attention." ⁹³

⁹¹ League of California Cities: "California League Conference Calls for Action Program on Property Tax" *Western City*. XXI, No. 10 (October, 1946), p. 31

⁹² *Report of the State Board of Equalization 1935-1936*. p. 2

⁹³ *Report of the State Board of Equalization 1953-1954*, p. 4.

EXHIBIT B



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2018 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT SEO,
aka "Seung Hye Seo,"
aka "Scott Hoon Seo," and
WILBUR M. SALAO,
aka "Will Salao,"

Defendants.

No. CR18-00625-JAK

I N D I C T M E N T

[18 U.S.C. § 371: Conspiracy;
18 U.S.C. § 1346: Honest Services
Fraud; 18 U.S.C. § 1341: Mail
Fraud; 18 U.S.C. § 1343: Wire
Fraud; 18 U.S.C. § 666(a)(2):
Bribery Concerning Programs
Receiving Federal Funds; 18 U.S.C.
§ 2: Aiding and Abetting and
Causing an Act to be Done]

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

A. RELEVANT PERSONS AND ENTITIES

1. The State of California ("California" or "State") and the California Department of Alcoholic Beverage Control ("ABC") received benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, and other form of Federal assistance during the following one-year periods:

| Begin Date | End Date |
|-----------------|--------------------|
| October 1, 2013 | September 30, 2014 |
| October 1, 2014 | September 30, 2015 |
| October 1, 2015 | September 30, 2016 |

2. The ABC was vested with the exclusive power to license and regulate persons and businesses engaged in the manufacture, importation, distribution, and sale of alcoholic beverages in the State of California. The ABC's mission was to administer the provisions of the Alcoholic Beverage Control Act in a manner that fostered and protected the health, safety, welfare, and economic well-being of California citizens. The ABC's responsibilities included, among others: (1) licensing, to ensure that only qualified persons and legitimate businesses were licensed to sell, manufacture, and otherwise deal in alcoholic beverages; and (2) enforcement, to ensure adherence to the alcoholic beverage control laws and regulations. Penalties paid in lieu of license suspensions were collected into the Alcohol Beverage Control Fund, and were then transferred to the State General Fund.

3. Defendant WILBUR M. SALAO, also known as ("aka") "Will Salao" ("defendant SALAO"), was a public official employed by the ABC, and an agent of the ABC and the State. Defendant SALAO began working at the ABC in or around July 1997. Beginning in at least about 2010, defendant SALAO was a District Administrator in the Los Angeles Metro ABC office, within the Central District of California.

4. As an ABC district administrator, defendant SALAO's duties and responsibilities included, among others: (1) directing the work of the field office in licensing activities; (2) reviewing and

1 evaluating final recommendations for the issuance or denial of
2 licenses; (3) directing the enforcement staff and enforcement
3 operations; (4) coordinating and conducting disciplinary hearings
4 with licensees; and (5) proposing dispositions of disciplinary cases.

5 5. As an ABC employee, under Section 830.2(h) of the
6 California Penal Code, defendant SALAO was a peace officer whose
7 authority extended to any place in the State to investigate and make
8 arrests for violations of the California Business and Professions
9 Code. Under Section 25755 of the California Business and Professions
10 Code, defendant SALAO was further empowered to enforce California
11 penal provisions anywhere in the State.

12 6. As a public official employed by the State, defendant SALAO
13 owed a fiduciary duty to the citizens of the State and to defendant
14 SALAO's employer, the ABC, to perform the duties and responsibilities
15 of defendant SALAO's office free from bias, conflicts of interest,
16 self-enrichment, self-dealing, concealment, deceit, fraud, kickbacks,
17 and bribery.

18 7. Defendant SCOTT SEO, aka "Seung Hye Seo," aka "Scott Hoon
19 Seo" ("defendant SEO"), was a consultant who offered consulting
20 services on, among other things, matters concerning ABC licenses, ABC
21 condition modifications, and ABC enforcement and disciplinary
22 resolutions. Defendant SEO began his consulting business in
23 approximately 2006, after serving as an investigator for the ABC for
24 approximately 15 years. As a consultant, defendant SEO marketed his
25 services to, among others, businesses in the Koreatown area of Los
26 Angeles, California. Defendant SEO marketed his services by mailing
27 marketing materials and on the websites www.abcllc-ca.com and
28 www.liquorlicenseexpeditors.com.

1 8. Alcoholic Beverage Control LLC ("ABC LLC") was a consulting
2 company registered in the State of California, with an office located
3 at 3460 Wilshire Boulevard, Suite 1240, Los Angeles, California
4 90010. Defendant SEO was the organizer, manager, and agent for
5 service of process for ABC LLC.

6 9. Defendant SEO opened a Bank of America business account for
7 ABC LLC, ending in 0781 (the "ABC LLC Account"), which defendant SEO
8 used to deposit checks from clients, to write checks to defendant
9 SALAO and others, and to pay various expenses.

10 10. "Asian Persuasion Control," "Asian Persuasion Coalition,"
11 "APC" and "AP" were informal names defendant SEO and defendant SALAO
12 used to refer to themselves and their schemes to use defendant
13 SALAO's official position at ABC to benefit defendant SEO in exchange
14 for money.

15 B. BACKGROUND ON ABC LICENSING AND ENFORCEMENT

16 11. Any establishment in California serving alcohol was
17 required to have a license from the ABC. Before issuing a license,
18 the ABC evaluated the proposed establishment and the applicant's
19 moral character and fitness to sell alcohol. The applicant was
20 required to post public notices regarding the liquor license at the
21 establishment and in the local media. Citizens could protest the
22 granting of a license. Government entities, such as a city council
23 or local police department could also notify the ABC of reasons for
24 contesting the license, such as evidence that the issuance of a
25 license would cause a public nuisance. All ABC licenses were subject
26 to specific operating conditions, including, for example, specific
27 hours of operation, total capacity, security guard requirements,
28 bottle service restrictions, and live entertainment restrictions.

1 12. When applying for an ABC license, the applicant was
2 required to file various documents, including a petition listing the
3 specific operating conditions and an ABC-257 Form. The front of the
4 257 Form included a diagram of the licensed premises, the only area
5 within which the establishment can legally serve alcoholic beverages.
6 The back of the 257 Form included the specific operating conditions
7 for the establishment. Once approved, changing operating conditions
8 (referred to as a "condition modification") or the licensed premises
9 diagram required formal applications and approvals. The ABC
10 maintained these documents at its district offices. ABC staff,
11 including district administrators, had access to these documents
12 within ABC's district files.

13 13. License holders were subject to routine and random
14 inspections by the ABC to ensure compliance with license operating
15 conditions and the law, such as the prohibition against selling
16 alcohol to minors. The ABC's planned enforcement operations (or
17 "raids") were kept confidential to ensure their effectiveness and for
18 enforcement staff safety.

19 14. If ABC staff observed a violation at a licensed premises, a
20 district administrator sent a letter (referred to as a "309 letter")
21 to request the licensee's attendance at a "309 hearing" or "309
22 meeting" at the ABC office to discuss the alleged violation and
23 potential resolution. The licensee could attend the hearing on
24 his/her own or with a consultant or attorney. After the 309 hearing,
25 the district administrator prepared a report with a recommendation on
26 filing an accusation and proposed discipline. The potential
27 disciplinary actions included, among others, a Letter of Warning
28 ("LOW"), a fine (referred to as a Petition Offer in Compromise or

1 "POIC"), suspension of the license for a specific number of days, and
2 revocation of the license. The licensee could either sign a
3 stipulation and waiver pleading guilty to the violation and waiving
4 an administrative hearing, or litigate the accusation in an
5 administrative hearing before an administrative law judge.

6 C. KOREATOWN ESTABLISHMENTS

7 15. Koreatown was a neighborhood in central Los Angeles,
8 California, located within City Council District 10. The Los Angeles
9 Police Department ("LAPD") provided police service to the City of Los
10 Angeles, with the LAPD Olympic Division serving the Koreatown area.

11 16. Establishments in Koreatown served and sold alcoholic
12 beverages in room salons, karaoke bars, restaurants, and nightclubs.
13 These establishments were licensed by the ABC and subject to ABC
14 regulations and enforcement. Common violations encountered by the
15 ABC and LAPD in Koreatown establishments included: (1) operating past
16 the closing hour specified in the operating conditions (referred to
17 as "afterhours" violations); (2) paying females to encourage drinking
18 by patrons, to act as escorts, or to engage in other illegal conduct
19 (commonly referred to as "b-girls," "dowoomi," and "doumi"); and (3)
20 serving alcohol to minors.

21 17. Businesses 1-8 were establishments in Koreatown subject to
22 ABC regulations and enforcement.

23 18. These Introductory Allegations are hereby incorporated by
24 reference into each count of this Indictment as if set forth fully
25 therein.

COUNT ONE

[18 U.S.C. § 371]

A. OBJECTS OF THE CONSPIRACY

19. Beginning on an unknown date but no later than December 9, 2011, and continuing until on or about May 3, 2016, in Los Angeles County, within the Central District of California, and elsewhere, defendant SEO and defendant SALAO, together with others known and unknown to the Grand Jury, knowingly combined, conspired, and agreed with each other to knowingly and intentionally commit offenses against the United States, namely: (1) Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 666; (2) Honest Services Fraud, in violation of Title 18, United States Code, Sections 1341, 1343, and 1346; and (3) Extortion under Color of Official Right, in violation of Title 18, United States Code, Section 1951.

B. MEANS BY WHICH THE OBJECTS OF THE CONSPIRACY WERE TO BE ACCOMPLISHED

20. The objects of the conspiracy were to be accomplished, in substance, as follows:

a. Defendant SEO would provide defendant SALAO bribes and kickbacks in the form of monetary payments in exchange for official acts from defendant SALAO.

b. Defendant SEO would target businesses for enforcement actions, allowing defendant SEO to sign new clients, to generate fees from existing clients, to harm competitors and rivals, and to force businesses to sell their establishments to defendant SEO and his associates.

1 c. In exchange for receiving bribes and kickbacks from
2 defendant SEO, defendant SALAO would perform at least the following
3 official acts in his capacity as an ABC District Administrator:

4 i. directing ABC enforcement operations and
5 disciplinary actions against targeted businesses defendant SEO
6 selected;

7 ii. altering official ABC documents at the direction
8 of defendant SEO, including modifying diagrams and operating
9 conditions;

10 iii. sharing non-public information with defendant SEO
11 to benefit defendant SEO and his clients;

12 iv. expediting the licensing process for defendant
13 SEO's clients at defendant SEO's direction; and

14 v. delaying the licensing process for defendant
15 SEO's competitors at defendant SEO's direction.

16 d. Defendant SEO and defendant SALAO would conceal from
17 the ABC and the State that defendant SEO paid defendant SALAO bribes
18 and kickbacks in exchange for official acts from defendant SALAO.

19 e. Defendant SEO would convince business owners to pay
20 defendant SEO a "consulting fee" to avoid harsh disciplinary actions
21 imposed by defendant SALAO as an ABC District Administrator.

22 C. OVERT ACTS

23 21. In furtherance of the conspiracy, and to accomplish the
24 objects of the conspiracy, on or about the following dates, defendant
25 SEO and defendant SALAO, and others known and unknown to the Grand
26 Jury, committed various overt acts in Los Angeles County, within the
27 Central District of California, and elsewhere, including, but not
28 limited to, the following:

1 a. Bribe and Kickback Payments

2 Overt Act No. 1: On January 22, 2014, during an in-person
3 meeting in Los Angeles County, defendant SEO paid defendant SALAO a
4 \$1,900 cash bribe.

5 Overt Act No. 2: On April 24, 2014, during an in-person meeting
6 in Los Angeles County, defendant SEO paid defendant SALAO a \$2,000
7 bribe by check, check number 1021, from the ABC LLC Account.

8 Overt Act No. 3: On February 6, 2015, during an in-person
9 meeting in Los Angeles County, defendant SEO paid defendant SALAO a
10 \$2,500 bribe by check, check number 1037, from the ABC LLC Account.

11 Overt Act No. 4: On March 4, 2015, during an in-person meeting
12 in Los Angeles County, defendant SEO paid defendant SALAO a \$2,500
13 bribe by check, check number 1042, from the ABC LLC Account.

14 Overt Act No. 5: On April 30, 2015, during an in-person meeting
15 in Los Angeles County, defendant SEO paid defendant SALAO a \$2,250
16 bribe by check, check number 1053, from the ABC LLC Account.

17 Overt Act No. 6: On June 16, 2015, during an in-person meeting
18 in Los Angeles County, defendant SEO paid defendant SALAO a \$2,500
19 bribe by check, check number 1065, from the ABC LLC Account.

20 Overt Act No. 7: On August 17, 2015, during an in-person
21 meeting in Los Angeles County, defendant SEO paid defendant SALAO a
22 \$2,500 cash bribe.

23 Overt Act No. 8: On October 14, 2015, during an in-person
24 meeting in Los Angeles County, defendant SEO paid defendant SALAO a
25 \$5,250 bribe by check.

26 Overt Act No. 9: On January 28, 2016, during an in-person
27 meeting in Los Angeles County, defendant SEO paid defendant SALAO a
28 \$2,000 cash bribe.

b. \$60,000 Cash Payment to "Fix" ABC License Issue

1 Overt Act No. 10: On December 9, 2011, defendant SALAO caused
2 the ABC to raid Business 1.
3

4 Overt Act No. 11: On December 12, 2011, defendant SALAO sent an
5 e-mail from his ABC e-mail account informing Business 1 that the ABC
6 will be surrendering Business 1's license, adding: "This process
7 effectively places the license in an inactive status. The surrender
8 is effective today. Sales, service or consumption of alcoholic
9 beverages at a business where the license has been surrendered is a
10 misdemeanor."

11 Overt Act No. 12: Between December 12, 2011 and December 14,
12 2011, defendant SEO met with Cooperating Witness 1 ("CW-1") and
13 Cooperating Witness 2 ("CW-2") at Business 1. During this meeting,
14 defendant SEO offered to resolve the ABC license issue for \$60,000.
15 Defendant SEO told CW-1 and CW-2 that he would need to pay important
16 people at ABC to get their assistance.

17 Overt Act No. 13: Between December 12, 2011 and December 14,
18 2011, defendant SEO accepted \$60,000 in cash from CW-2 as a payment
19 to bribe public officials to resolve Business 1's ABC license issue.

20 Overt Act No. 14: On December 15, 2011, at defendant SEO's
21 request, defendant SALAO signed and issued a temporary permit to
22 Business 1, allowing Business 1 "to engage in the purchase and sale
23 of alcoholic beverages" from December 15, 2011 to April 14, 2012.

24 Overt Act No. 15: In December 2011, defendant SEO paid
25 defendant SALAO in cash or by check in return for defendant SALAO's
26 assistance at the ABC.
27
28

1 c. Directing Enforcement Operations and Disciplinary
2 Actions

3 Overt Act No. 16: On January 9, 2015, defendant SEO and
4 defendant SALAO had a text message conversation regarding their
5 scheme. During this conversation, defendant SEO wrote to defendant
6 SALAO: "Remember AP accusation cases you have to find a way to go LOW
7 or reduce penalty. They have to see value to retain me. Or else
8 they have to pay POIC and our fees which will be difficult to
9 justify." Defendant SALAO responded: "Oh of course. That's why we
10 have operation knock & notice."

11 Overt Act No. 17: Later that same day, on January 9, 2015,
12 defendant SALAO wrote: "So my plan for the b-girl places is this: I
13 go in with a partner in uniform. We inspect the place. We FI a few
14 girls, take photos, go over what conditions they are violating &
15 leave. I get back to the office and send a 309 letter a week or two
16 later. If they are represented by AP, I will conditions, asking for
17 stiff penalty. We do the same song & dance and they get LOW due to
18 your expertise as former abc. If they aren't represented by AP and
19 another consultant or attorney calls me, I yell at them for violating
20 their conditions and tell them to knock it off. Then we make a real
21 case against them." Defendant SEO responded: "Good plan. I like it."

22 *i. Business 2*

23 Overt Act No. 18: On December 18, 2014, defendant SEO sent an
24 e-mail to defendant SALAO with an attachment titled "Koreatown
25 Karaoke List." The attachment listed various establishments to
26 target in an upcoming ABC enforcement operation, including Business
27 2, listing potential violations at each establishment, such as
28 "afterhours," "Dowoomi," "B-girls," and noting that seven of the

1 targets "will most likely NOT retain me so make sure you put some
2 fear into them!! This will be a great start to Operation K-Town."

3 Overt Act No. 19: On February 5, 2015, defendant SEO and
4 defendant SALAO had a text message conversation regarding a "package
5 deal" for the owner of Business 2, including securing only a Letter
6 of Warning for a violation at Business 2. After defendant SALAO
7 confirmed this resolution was possible, defendant SALAO asked: "How
8 much did you suck out of them?" Defendant SEO responded: "\$7.5
9 [thousand]."

10 Overt Act No. 20: On April 7, 2015, defendant SALAO, in his
11 official ABC capacity and on ABC letterhead, sent a Letter of Warning
12 by U.S. Mail to Business 2.

13 *ii. Business 3*

14 Overt Act No. 21: On July 27, 2015, defendant SEO and defendant
15 SALAO had a text message conversation regarding Business 3. During
16 this conversation, defendant SALAO told defendant SEO: "Also appears
17 that [Business 3] either paid off or tried to pay off recent rape
18 victim at their joint." When defendant SEO asked what happened,
19 defendant SALAO responded: "Bgirl got raped. She reported it to
20 LAPD." Defendant SALAO asked if Business 3 was an APC client.
21 Defendant SEO responded: "They're not APC. They haven't responded to
22 my letter. I'm going to send one more."

23 Overt Act No. 22: On August 24, 2015, defendant SEO sent an
24 envelope by U.S. Mail with marketing material in Korean to Business
25 3.

26 Overt Act No. 23: On December 2, 2015, defendant SEO and
27 defendant SALAO, in a text message conversation, discussed that the
28

1 "best APC" result for Business 3 for their pending ABC violations was
2 a 60-day suspension.

3 Overt Act No. 24: On December 14, 2015, defendant SEO and
4 defendant SALAO, in a text message conversation, discussed Business
5 3's pending ABC violations. During that conversation, defendant
6 SALAO told defendant SEO: "Just [got] dvd of footage. Not good for
7 ABC/LAPD but good for APC. No after hours footage." Defendant SALAO
8 then told defendant SEO that the ABC would seek a 30-day suspension.

9 Overt Act No. 25: On February 8, 2016, defendant SALAO, in his
10 official ABC capacity and using ABC letterhead, sent a letter by U.S.
11 Mail to Business 3 requesting a 309 meeting.

12 Overt Act No. 26: On February 12, 2016, defendant SEO, in a
13 text message conversation, told defendant SALAO that Business 3 was
14 "ready to sign stip n waive" for a 30-day suspension.

15 *iii. Business 4*

16 Overt Act No. 27: On October 22, 2015, defendant SEO sent an e-
17 mail to defendant SALAO identifying target businesses to hit in an
18 upcoming ABC raid, including Business 4.

19 Overt Act No. 28: On October 24, 2015, defendant SALAO caused
20 the ABC to raid Business 4.

21 Overt Act No. 29: On November 3, 2015, defendant SALAO, in his
22 official ABC capacity and using ABC letterhead, sent a letter by U.S.
23 Mail to Business 4 requesting a 309 meeting.

24 Overt Act No. 30: On December 21, 2015, defendant SALAO, in a
25 text message conversation, asked defendant SEO: "Wouldn't it be nice
26 if we could strong arm [Business 4] into selling Biz to APC?"

27 Overt Act No. 31: On January 13, 2016, defendant SEO met with
28 the owners of Business 4 in Los Angeles, California.

1 Overt Act No. 32: On January 21, 2016, defendant SEO and
2 defendant SALAO, in a text message conversation, discussed Business 4
3 as a potential location for defendant SEO and defendant SALAO's
4 Koreatown establishment. During that conversation, defendant SEO
5 told defendant SALAO: "[Business 4] will be APC location #1. Just
6 have to scare [Victim] to convince his mom go sell or lease it out."
7 After defendant SALAO asked "What do you mean?", defendant SEO
8 explained: "I have a team ready to sub-lease or do per to per if
9 [Victim] is scared enough to get out." Defendant SEO later wrote:
10 "We just need enough fear for [Victim] to convince his mom to get
11 out. It's his reputation on the line."

12 Overt Act No. 33: On February 8, 2016, defendant SALAO, in his
13 official ABC capacity and using ABC letterhead, sent a letter by U.S.
14 Mail to Business 4 requesting a 309 meeting.

15 Overt Act No. 34: On March 3, 2016, defendant SEO and defendant
16 SALAO, in a text message conversation, discussed "hitting [Business
17 4] to convince them to get out of Dodge."

18 Overt Act No. 35: On March 9, 2016, defendant SEO and defendant
19 SALAO, in a text message conversation, discussed their strategy of
20 ABC raids at Business 4. During that conversation, defendant SEO
21 wrote: "Only reason why I'm not down with hitting them now is because
22 we may have to buy existing girls debts if we takeover. And if they
23 get spooked then they will run. And others in Ktown won't want to
24 come work at [Business 4] since they will think it's too risky to
25 work there."

26 Overt Act No. 36: On March 25, 2016, at defendant SEO's
27 request, defendant SALAO caused the ABC to raid Business 4.

28

1 Overt Act No. 37: On May 18, 2016, defendant SEO, in a text
2 message conversation, told defendant SALAO that he (defendant SEO)
3 became a silent part-owner of Business 4.

4 d. Altering Official ABC Documents

5 Overt Act No. 38: On March 14, 2014, defendant SEO and
6 defendant SALAO, in a text message conversation, discussed modifying
7 a diagram in exchange for a \$1,000 payment from defendant SEO's
8 client. During that conversation, defendant SEO told defendant
9 SALAO: "need to modify diagram. Storage area built illegally and
10 need to be part of diagram." After confirming that defendant SEO had
11 not filed anything yet, defendant SALAO wrote: "Gimme a drawing and
12 I'll add it to the existing 257."

13 Overt Act No. 39: On October 9, 2014, defendant SEO and
14 defendant SALAO, in a text message conversation, discussed using
15 their condition modification scheme for one of defendant SEO's
16 clients who wanted to remove three conditions from its operating
17 conditions. During that discussion, defendant SALAO warned: "Can't
18 do all 3. Talk to them and find out which one is most important to
19 them. An old man forgetting to type one condition is not as
20 suspicious as the 3 they wanted removed suddenly disappearing."

21 Overt Act No. 40: On December 17, 2015, defendant SEO and
22 defendant SALAO, in a text message conversation, discussed their
23 condition modification scheme. During that conversation, defendant
24 SALAO told defendant SEO: "That's way too many for the conditions.
25 We originally discussed the bar issue only. I can't delete almost
26 half of them. Pick one or two that he wants. Whole premise behind
27 APC condition mod is that the LR fucked up and forgot one or two. To
28 delete that many isn't a mistake." In response, defendant SEO

1 suggested deleting conditions related to the bar, security guard, and
2 bottles. Defendant SALAO responded: "Yeah that's doable."

3 e. Sharing Non-Public Information

4 Overt Act No. 41: On March 7, 2015, defendant SALAO, in a text
5 message conversation, warned defendant SEO of police enforcement
6 action in Koreatown: "Remember Olympic [LAPD] is out tonight."

7 Overt Act No. 42: On April 12, 2016, defendant SALAO, in a text
8 message conversation, warned defendant SEO about the identity of a
9 potential informant working with law enforcement in Koreatown: "One
10 of my goons [ABC enforcement officers] said he may be able to turn a
11 bgirl he contacted into a confidential informant. I'm gonna get her
12 photo and ID to you. Either way, I'm gonna get you her 411 so if she
13 comes knocking for a job you know what to do."

14 Overt Act No. 43: On April 11, 2016, defendant SEO and
15 defendant SALAO, in a text message conversation, discussed
16 confidential identifying information regarding undercover LAPD
17 officers conducting enforcement operations in Koreatown. During that
18 conversation, defendant SALAO told defendant SEO: "When we do next
19 ktown thing with LAPD I will get you photos of Korean officers."
20 Defendant SEO responded: "NICE!!!!!!!!!!!!!! Good thinking." Defendant
21 SALAO then sent a photograph of an officer, writing: "Here's one of
22 them." Defendant SEO responded: "Nice. I will make sure he's
23 marked."

24 Overt Act No. 44: On December 11, 2013, defendant SEO, in a
25 text message conversation, told one of his clients in Koreatown that
26 the LAPD met with the ABC and made plans to raid a particular karaoke
27 establishment in Koreatown.

1 Overt Act No. 45: On February 6, 2014, defendant SEO, in a text
2 message conversation, warned one of his clients in Koreatown that the
3 LAPD planned a raid in Koreatown that evening.

4 Overt Act No. 46: On March 7, 2014, defendant SEO, in a text
5 message conversation, warned one of his clients in Koreatown that the
6 LAPD and ABC were "out in Ktown."

7 Overt Act No. 47: On February 25, 2015, defendant SEO, in a
8 telephone conversation, warned one of his clients in Koreatown of an
9 upcoming raid in Koreatown and advised the client to close the
10 establishment on the night of the planned operation.

11 f. Expediting or Delaying the Licensing Process

12 Overt Act No. 48: On August 20, 2015, defendant SEO and
13 defendant SALAO, in a text message conversation, discussed expediting
14 a license for one of defendant SEO's clients. During that
15 conversation, defendant SEO told defendant SALAO "please reinstate
16 this license ASAP and let me know." Defendant SALAO responded three
17 minutes later: "It's reinstated." After defendant SEO thanked him,
18 defendant SALAO wrote: "APC customer service."

19 Overt Act No. 49: On March 27, 2014, defendant SEO and
20 defendant SALAO, in a text message conversation, discussed delaying
21 the licensing process for certain targeted businesses. During that
22 conversation, defendant SEO told defendant SALAO: "I will give you
23 list of clients that just played me for free info and will file
24 themselves or with cheap consultant. I need your help and make sure
25 they hit many road bumps." Defendant SALAO responded: "Fuck em. I'll
26 make it impossible for them without AP help."

27 Overt Act No. 50: On March 18, 2016, defendant SEO and
28 defendant SALAO, in a text message conversation, discussed delaying

1 the licensing process for defendant SEO's competitors. During that
2 conversation, defendant SEO told defendant SALAO: "The way to kill
3 off [two competitors] is on your end. Scrutinize the shit out of
4 their cases and delay is the key. And 309 find a way not to grant [a
5 fine]. Give maximum penalty and make note of their clients and APC
6 enforcement for second pop and raise the penalty. Then I send APC
7 letter to them. LOL. We may not able to stop people from going to
8 them the first time but we can steal them for the second violation."
9 Defendant SALAO responded: "Ever moving parts to ktown dominance."

10 g. Concealing Material Facts

11 Overt Act No. 51: On December 17, 2015, defendant SEO and
12 defendant SALAO, in a text message conversation, discussed concealing
13 their scheme to alter official ABC documents. During that
14 conversation, defendant SALAO stated: "I'm still so paranoid though.
15 I was checking ceiling tiles in the base file room to make sure there
16 weren't cameras." Defendant SEO responded: "Paranoia is GOOD. that
17 means you're alert. Shit happens when you're complacent." Defendant
18 SEO then wrote: "When you said you were paranoid about base file area
19 I had a thought. It would [b]e funny to see base files shrink to half
20 and you expand your garage for all APC files. Lol." Defendant SALAO
21 responded: "That would be great. More APC files the better the
22 college the boys go to!" Defendant SEO then wrote: "LOL. Private."

23 Overt Act No. 52: On January 15, 2016, defendant SEO and
24 defendant SALAO, in a text message conversation, discussed Business 4
25 engaging in human trafficking. During that conversation, defendant
26 SALAO warned: "Just make sure your name is nowhere to be found."
27 Defendant SEO responded: "You got it." Defendant SALAO then wrote:
28

1 "First thing Feds will do is freeze your assets and then there'll be
2 checks made out to me."

3 h. Payments from Koreatown Businesses

4 Overt Act No. 53: On August 11, 2015, defendant SEO and
5 defendant SALAO, in a text message conversation, discussed their "ops
6 plan." During that conversation, defendant SEO told defendant SALAO
7 that he found a complete list of Koreatown businesses in his Gmail
8 account, and added "I'm slow this month so I will dedicate entire
9 month to APC and membership to these fools. [An unindicted co-
10 conspirator] offered to act as sales agent. Her looks will get her
11 through the door." Defendant SALAO responded: "Now slow down on [the
12 unindicted co-conspirator] going door to door. We should pop them
13 APC style first to lure them in. Then slam them with membership."
14 Co-conspirator SALAO later wrote: "If they don't sign we at least
15 extort them for money. Correction. Extort is such a harsh word.
16 Help them with their lack of compliance sounds better." Defendant
17 SEO responded: "I totally agree. When we meet Monday we need to
18 seriously coordinate this APC."

19 Overt Act No. 54: On August 11, 2015, defendant SEO sent an e-
20 mail to defendant SALAO, sending an attachment titled "APC ACTION
21 PLAN," which described a "to do list," including defendant SEO
22 setting up a website, creating and sending marketing letters, and
23 creating an "ABC violation prone restaurant list," and defendant
24 SALAO providing a "61, CUP, ABC violation list" and a "[n]ew ABC
25 license application list" on a weekly basis.

26 i. *Business 5*

27 Overt Act No. 55: On October 6, 2014, defendant SEO and
28 defendant SALAO, in a text message conversation, discussed a recent

1 ABC violation at Business 5. During that conversation, defendant
2 SALAO informed defendant SEO that Business 5 had "b-girl" violations
3 from a recent ABC visit. Defendant SALAO told defendant SEO to
4 advise the business "to cool it for the next couple of weeks," but
5 defendant SEO responded: "No let's get them busted. Fuck it. Then
6 we can do damage control."

7 Overt Act No. 56: On November 19, 2014, defendant SEO and
8 defendant SALAO, in a text message conversation, discussed their plan
9 regarding Business 5. During that conversation, defendant SEO told
10 defendant SALAO: "I thought about it and I have a plan... Here's what
11 I plan. Tell me if feasible... Call us in for original 35 days to
12 scare him. Then we come back in and then make it seem I reduced it
13 to [a fine]. That will have better effect on AP." Defendant SALAO
14 responded: "Yeah not a problem. We can do the first 309 anytime."

15 Overt Act No. 57: On December 19, 2014, defendant SEO and
16 defendant SALAO, in a text message conversation, discussed the fee
17 defendant SEO charged for his services. During that conversation,
18 defendant SEO told defendant SALAO that he "[g]ot 3k last night" from
19 the owner of Business 5. Defendant SALAO responded: "Damn! 3K
20 [\$3,000] just like that? We are gonna rape Ktown!" Later that day,
21 defendant SEO told defendant SALAO: "When we meet I will have some
22 plans ready like korean news media and how we can use them to pump
23 fear into Ktown." Defendant SALAO responded: "I'm open to whatever
24 lines our wallets!"

25 *ii. Business 6*

26 Overt Act No. 58: On January 23, 2015, defendant SEO sent a
27 text message to defendant SALAO with a list of businesses for ABC to
28 raid in Koreatown, including Business 6.

1 Overt Act No. 59: On January 24, 2015, defendant SALAO caused
2 the ABC to raid Business 6.

3 Overt Act No. 60: On February 27, 2015, defendant SEO
4 accompanied the licensee of Business 6 to a 309 hearing at the ABC
5 office.

6 Overt Act No. 61: On March 6, 2015, defendant SEO deposited a
7 \$2,950 check from Business 6 into the ABC LLC Account.

8 *iii. Business 7*

9 Overt Act No. 62: On July 30, 2015, defendant SEO sent an e-
10 mail to defendant SALAO, with a list of businesses for ABC to raid,
11 including Business 7, writing: "Anything is good. Ex client... Good
12 scare will do. Maybe take photo of b girls."

13 Overt Act No. 63: On August 1, 2015, defendant SALAO caused the
14 ABC to raid Business 7.

15 Overt Act No. 64: On August 5, 2015, defendant SALAO, in his
16 official ABC capacity and using ABC letterhead, sent a letter by U.S.
17 Mail to Business 7, requesting a 309 meeting.

18 Overt Act No. 65: On August 20, 2015, defendant SEO met with
19 the owner of Business 7 to discuss the ABC violation.

20 Overt Act No. 66: On August 26, 2015, defendant SEO deposited a
21 \$2,000 check from Business 7 into the ABC LLC Account.

22 *iv. Business 8*

23 Overt Act No. 67: On August 13, 2015, defendant SEO, in a text
24 message conversation, told defendant SALAO to direct an ABC raid
25 against Business 8.

26 Overt Act No. 68: On August 14, 2015, defendant SALAO caused
27 the ABC to raid Business 8.

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1 Overt Act No. 69: On September 2, 2015, defendant SALAO, in his
2 official ABC capacity and using ABC letterhead, sent a letter by U.S.
3 Mail to Business 8, requesting a 309 meeting.

4 Overt Act No. 70: On September 16, 2015, defendant SEO
5 accompanied the licensee of Business 8 to a 309 hearing at the ABC
6 office.

7 Overt Act No. 71: On September 17, 2015, defendant SEO, in a
8 text message conversation, confirmed to defendant SALAO that
9 defendant SEO would charge Business 8 \$2,500 for the 309 hearing.

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COUNTS TWO THROUGH NINE

[18 U.S.C. §§ 1341, 1343, 1346; 18 U.S.C. §§ 2(a), (b)]

22. The Grand Jury hereby repeats, re-alleges, and incorporates by reference paragraph 21 of Count One of this Indictment as if set forth fully herein.

A. THE SCHEME TO DEFRAUD

23. Beginning on an unknown date but no later than December 9, 2011, and continuing until on or about May 3, 2016, in Los Angeles County, within the Central District of California, and elsewhere, defendant SEO and defendant SALAO, together with others known and unknown to the Grand Jury, knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud the citizens of the State of California and defendant SALAO's employer, the ABC, of their right to the honest services of their public officials through bribery and kickbacks, materially false and fraudulent pretenses and representations, and the concealment of material information.

B. MEANS AND METHODS OF THE SCHEME TO DEFRAUD

24. The scheme to defraud operated, in substance, in the manner and by the means described in Paragraph 20 of Count One of this Indictment.

C. USE OF THE MAIL

25. On or about the dates set forth below, within the Central District of California and elsewhere, defendant SEO and defendant SALAO, each aiding and abetting the other, for the purpose of executing the above-described scheme to defraud, willfully caused the following items to be placed in an authorized depository for mail

1 matter to be sent and delivered by the United States Postal Service
2 according to the directions thereon:

| <u>COUNT</u> | <u>DATE</u> | <u>MAILING</u> |
|--------------|-------------|---|
| TWO | 04/07/2015 | Letter from defendant SALAO in his official ABC capacity to Business 2, issuing a warning. |
| THREE | 08/24/2015 | Envelope from Alcoholic Beverage Control, LLC addressed to Business 3, containing marketing material. |
| FOUR | 02/08/2016 | Letter from defendant SALAO in his official ABC capacity to Business 3, requesting a 309 meeting. |
| FIVE | 02/08/2016 | Letter from defendant SALAO in his official ABC capacity to Business 4, requesting a 309 meeting. |

11 D. USE OF WIRES

12 26. On or about the dates set forth below, within the Central
13 District of California and elsewhere, defendant SEO and defendant
14 SALAO, each aiding and abetting the other, for the purpose of
15 executing the above-described scheme to defraud, transmitted and
16 caused the transmission of the following items by means of wire
17 communication in interstate commerce:

| <u>COUNT</u> | <u>DATE</u> | <u>WIRE TRANSMISSION</u> |
|--------------|-------------|---|
| SIX | 12/18/2014 | E-mail from defendant SEO's Gmail account to defendant SALAO's Yahoo account, sending an attachment containing a target list titled "Koreatown Karaoke List," including Business 2. |
| SEVEN | 07/30/2015 | E-mail from defendant SEO's Gmail account to defendant SALAO's Yahoo account, sending an attachment containing a target list, including Business 7. |
| EIGHT | 08/11/2015 | E-mail from defendant SEO's Gmail account to defendant SALAO's Yahoo account, sending an attachment titled "APC ACTION PLAN." |
| NINE | 10/22/2015 | E-mail from defendant SEO's Gmail account to defendant SALAO's Yahoo account, sending an attachment containing a target list, including Business 5. |

COUNTS TEN THROUGH THIRTEEN

[18 U.S.C. § 666(a)(2)]

27. The Grand Jury hereby repeats, re-alleges, and incorporates by reference paragraphs 20 and 21 of Count One of this Indictment as if set forth fully herein.

28. On or about the following dates, in Los Angeles County, within the Central District of California, defendant SEO corruptly gave, offered, and agreed to give things of value to co-conspirator Salao, that is, the monetary payments set forth below, intending to influence and reward co-conspirator Salao in connection with business, transactions, and series of transactions of the ABC, having a value of \$5,000 or more, namely: (a) directing ABC enforcement operations and disciplinary actions against targeted businesses SEO selected; (b) altering official ABC documents for defendant SEO's clients, including modifying diagrams and conditions in 257 Forms; (c) sharing non-public information with defendant SEO to benefit defendant SEO and his clients; (d) expediting the licensing process for defendant SEO's clients; and (e) delaying the licensing process for defendant SEO's competitors.

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| COUNT | DATE(S) | THING OF VALUE |
|----------|--------------------------------------|--------------------------------|
| TEN | Between 04/24/2014 and 03/04/2015 | \$7,000 in three checks |
| ELEVEN | Between 04/30/2015 and 08/20/2015 | \$7,250 in two checks and cash |
| TWELVE | 10/14/2015 | \$5,250 check |
| THIRTEEN | 05/24/2016 | \$5,000 cash |

A TRUE BILL

/s/

Foreperson

NICOLA T. HANNA
United States Attorney


LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division

MACK E. JENKINS
Assistant United States Attorney
Chief, Public Corruption and
Civil Rights Section

DANIEL J. O'BRIEN
Assistant United States Attorney
Deputy Chief, Public Corruption and
Civil Rights Section

VERONICA DRAGALIN
Assistant United States Attorney
Public Corruption and Civil Rights
Section