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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation
of the Securities Act of Washington by:

MICHAEL D. MONTGOMERY,

Respondent.

S-08-129-09-SC01

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO REVOKE SECURITIES
SALESPERSON AND INVESTMENT
ADVISER REPRESENTATIVE
REGISTRATION

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THE STATE OF WASHINGTON TO:

Michael D. Montgomery (CRD #2029289)

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STATEMENT OF CHARGES

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Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondent Michael D. Montgomery has engaged in dishonest and unethical practices in the securities business while employed as a registered securities salesperson for Wachovia Securities Financial Network LLC, and as a securities salesperson and investment adviser representative for Mutual Service Corporation, and that those practices justify the suspension and/or revocation of Michael D. Montgomery's securities salesperson and investment adviser representative registration pursuant to RCW 21.20.110(1)(g). The Securities Administrator finds as follows:

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TENTATIVE FINDINGS OF FACT

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Respondents

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1. Michael D. Montgomery ("Montgomery") is an individual with a last known residence in Gig Harbor, Washington. Montgomery was registered as a securities salesperson with the Washington

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO REVOKE SECURITIES
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REPRESENTATIVE REGISTRATION

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 State Securities Division from February 10, 1992 to May 6, 1998 with Merrill Lynch, Pierce, Fenner &
2 Smith, Inc., and from June 18, 1998 to February 17, 2006 with Wachovia Securities Financial Network
3 LLC. Montgomery is currently registered as a securities salesperson with Mutual Service Corporation,
4 and has been since April 25, 2006. Montgomery is also currently registered as an investment adviser
5 representative with Mutual Service Corporation, and has been since May 1, 2006.

6 Introduction

7 2. Michael D. Montgomery, while working as a securities salesperson and investment adviser
8 representative, served as attorney in fact for an elderly Washington resident who was his client. He also
9 acted as trustee of the client's revocable living trust. Since at least 2002, Montgomery collected fees for
10 these services. In addition, Montgomery signed promissory notes in 2003 and 2004 in which he
11 borrowed up to \$546,000 from the same client. Between January and August of 2006, Montgomery
12 wrote \$105,070 in checks to himself from the client's accounts, purportedly for Power of Attorney
13 services. Following the client's death in July 2006, Montgomery wrote \$225,982 in checks to himself
14 from the client's estate, purportedly for estate services. Montgomery failed to disclose these outside
15 business activities to his employing firms.

16 Background

17 3. Michael D. Montgomery was employed as a securities salesperson in Washington with Merrill
18 Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") beginning in 1992. Merrill Lynch terminated
19 Montgomery on May 6, 1998 for marking an order ticket as "unsolicited" when it should have been marked
20 as "solicited."

1 4. Subsequent to the termination, Merrill Lynch discovered that Montgomery had falsified his
2 educational background. Montgomery claimed to have a degree from Stanford University. However,
3 Montgomery had not attended Stanford University, and his degree was from a different school. The NASD
4 issued a letter of reprimand to Montgomery for falsifying his educational background.

5 5. Following his termination from Merrill Lynch, Montgomery associated as an independent
6 contractor securities salesperson with Wachovia Securities Financial Network LLC (“Wachovia”).
7 Montgomery began doing business as Montgomery Capital Management in Tacoma, Washington.
8 Montgomery became a supervisor in the office, which also employed his wife as a registered representative.

9 Nature of the Conduct

10 6. In or about 1992, an elderly Washington resident became a client of Montgomery while
11 Montgomery was with Merrill Lynch. The resident continued to be a client of Montgomery at Montgomery
12 Capital Management. The Washington resident was not related to Montgomery.

13 7. On December 23, 1998, the Washington resident executed a Durable Power of Attorney which
14 named Montgomery as his Attorney in Fact. The Durable Power of Attorney became effective upon the
15 disability or incompetence of the resident, or in the event that the resident became incapable of giving
16 informed consent with respect to health care decisions.

17 8. On January 15, 1999, Montgomery was named in the Washington resident’s restated revocable
18 living trust as the successor trustee. Under the terms of the trust agreement, Montgomery would take over as
19 trustee should the resident resign or become unable to act as trustee.

1 9. In or about 1999, the Washington resident, who was then 83 years old, moved to a nursing home
2 facility. Montgomery assisted the Washington resident in selling his home and disposing of many of his
3 possessions.

4 10. Sometime between 1999 and 2002 Montgomery began acting as attorney in fact and as trustee for
5 the Washington resident. During this time, the Washington resident is believed to have held two bank
6 accounts at Key Bank and a brokerage account with Wachovia in his revocable living trust. In addition, he
7 held some personal property. The value of the living trust at the time is believed to be \$1.2 million. The
8 Washington resident's expenses for his nursing home facility and other expenses were approximately
9 \$80,000 a year. The expenses were paid from the Washington resident's social security income, investment
10 income, and investment principal. As attorney in fact or trustee, Montgomery arranged for the payment of
11 the expenses.

12 11. Montgomery began paying himself fees for services as attorney in fact and trustee at a rate of \$145
13 an hour. Montgomery wrote and signed checks to payable to Michael Montgomery or Michael Montgomery
14 Capital Management from the trust bank accounts. If there was not enough money in the account to pay the
15 fees, Montgomery caused securities to be liquidated in the trust brokerage account, and transferred the
16 proceeds to the trust bank accounts.

17 12. Between July 19, 1999 and February 15, 2002, Montgomery recorded the hours he expended
18 assisting the Washington resident and a brief description of the work performed. He recorded 191 hours for
19 1999; 216 hours for 2000; 212.5 hours for 2001; and 31 hours for 2002. On information and belief, in or
20 about 2002, Montgomery paid himself for these hours at a rate of \$145 an hour.

1 13. Montgomery could not produce time records subsequent to February 15, 2002 to the Securities
2 Division, nor estimate the amount he received in fees during the remainder of 2002, or for 2003 and 2004.
3 On information and belief, Montgomery continued making payments to himself for services in 2002, 2003,
4 and 2004. The value of the payments is unknown.

5 14. On January 7, 2003, Montgomery signed a promissory note in which he promised to pay to the
6 Washington resident's living trust "the sum total of the loan(s) made to Michael D. Montgomery or
7 Montgomery Capital Management up to Three Hundred Fifty Thousand Dollars (\$350,000.00) together with
8 interest of 8.5% per annum on the unpaid balance." The note stated that the note was to be paid in a lump
9 sum 60 months from the date initiated. Montgomery did not inform Wachovia that he borrowed from a
10 client, nor that it was a client for whom he was acting as attorney in fact. At the time the note was signed,
11 the Washington resident was 86 years old.

12 15. According to Montgomery, he borrowed the money from the Washington resident to pay his
13 business and personal expenses. Montgomery could not account for the actual amount of money he received
14 under the promissory note nor when he received it.

15 16. On May 14, 2003, Montgomery began transferring the Washington resident's brokerage account
16 from Wachovia to Charles Schwab. The transfer documents and new account forms were signed by the
17 Washington resident as trustee of his living trust. According to Montgomery, the transfer was made because
18 there was a conflict of interest with him serving as attorney in fact and trustee while also having the
19 Washington resident as his client at Wachovia.

20 17. In letter sent to a trust beneficiary, Montgomery listed the value of the trust at \$1,251,456 at the
21 end of 2003. Montgomery indicated that the Washington resident had \$66,732 in income for the year. He

1 indicated that the Washington resident had \$80,788 in expenses for the year, which included \$9,200 in fees
2 for Montgomery's services.

3 18. A year after he signed the first promissory note, Montgomery signed a second promissory note. In
4 the second promissory note, dated January 15, 2004, Montgomery promised to pay to the Washington
5 resident's living trust "the sum total of the loan(s) made to Michael D. Montgomery or Montgomery Capital
6 Management up to One Hundred Ninety-Six Thousand Dollars (\$196,000.00) together with interest of 8.5%
7 per annum on the unpaid balance." The note stated that the note was to be paid in a lump sum 60 months
8 from the date initiated. Montgomery did not inform Wachovia that he borrowed from a client, nor that it
9 was a client for whom he was acting as attorney in fact. At the time the note was signed, the Washington
10 resident was 87 years old.

11 19. Montgomery could not account for the actual amount of money he received under the second
12 promissory note nor when he received it.

13 20. Throughout 2005, Montgomery wrote checks to himself or his dba Montgomery Capital
14 Management from the Washington resident's bank accounts. The checks contained no indication, on the
15 memo line or otherwise, of what the payments represented. Montgomery wrote the following checks:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
1/3/05	Michael Montgomery	\$1,050
1/6/05	Michael Montgomery	\$850
1/14/05	Michael Montgomery	\$875
1/28/05	Michael Montgomery	\$4,800
1/28/05	Montgomery Capital Management	\$6,000
1/31/05	Michael Montgomery	\$4,700
1/31/05	Michael Montgomery	\$3,000
1/31/05	Montgomery Capital Management	\$6,500
2/3/05	Michael Montgomery	\$570
2/6/05	Michael Montgomery	\$900

1	2/14/05	Michael Montgomery	\$2,800
	2/14/05	Montgomery Capital Management	\$5,000
2	2/15/05	Michael Montgomery	\$3,500
	2/16/05	Montgomery Capital Management	\$6,000
3	2/22/05	Michael Montgomery	\$1,700
	3/1/05	Michael Montgomery	\$540
4	3/2/05	Michael Montgomery	\$1,600
	3/11/05	Michael Montgomery	\$4,600
5	3/14/05	Michael Montgomery	\$4,700
	3/16/05	Montgomery Capital Management	\$11,130.13
6	3/18/05	Michael Montgomery	\$1,500
	3/21/05	Montgomery Capital Management	\$1,500
7	4/1/05	Michael Montgomery	\$540
	4/5/05	Michael Montgomery	\$2,800
8	4/14/05	Michael Montgomery	\$3,900
	4/18/05	Montgomery Capital Management	\$9,556.61
9	4/20/05	Michael Montgomery	\$2,500
	4/29/05	Michael Montgomery	\$1,325
10	5/4/05	Michael Montgomery	\$950
	5/6/05	Michael Montgomery	\$2,750
11	5/13/05	Michael Montgomery	\$4,400
	5/13/05	Montgomery Capital Management	\$9,498.01
12	5/13/05	Michael Montgomery	\$4,600
	5/18/05	Michael Montgomery	\$3,200
13	5/23/05	Michael Montgomery	\$140
	5/31/05	Michael Montgomery	\$540
14	6/1/05	Michael Montgomery	\$2,800
	6/10/05	Michael Montgomery	\$2,400
15	6/13/05	Montgomery Capital Management	\$10,866.37
	6/14/05	Michael Montgomery	\$4,450
16	6/16/05	Michael Montgomery	\$4,350
	6/28/05	Michael Montgomery	\$1,600
17	6/30/05	Michael Montgomery	\$2,000
	7/11/05	Michael Montgomery	\$550
18	7/14/05	Michael Montgomery	\$3,700
	7/14/05	Montgomery Capital Management	\$10,304.04
19	7/15/05	Michael Montgomery	\$2,900
	7/18/05	Michael Montgomery	\$2,950
20	7/26/05	Michael Montgomery	\$2,200
	8/3/05	Michael Montgomery	\$550
21	8/12/05	Michael Montgomery	\$3,400
	8/12/05	Montgomery Capital Management	\$8,636.93

1	8/12/05	Michael Montgomery	\$3,500
	8/15/05	Michael Montgomery	\$3,600
2	8/17/05	Michael Montgomery	\$2,400
	8/30/05	Michael Montgomery	\$2,000
3	10/3/05	Michael Montgomery	\$1,100
	10/19/05	Michael Montgomery	\$740
4	11/1/05	Michael Montgomery	\$200
	11/18/05	Michael Montgomery	\$200
5	11/22/05	Michael Montgomery	\$120
	11/30/05	Michael Montgomery	\$500
6	12/1/05	Michael Montgomery	\$500
	12/12/05	Michael Montgomery	\$5,000.27
7		Total for 2005:	\$204,032.36

9 21. Montgomery failed to produce a record accounting for the hours spent on trust matters in 2005.

10 22. According to Montgomery, the checks he wrote himself from the Washington resident's bank
11 account in 2005 were loan proceeds and fees for services. However, he was unable to determine which
12 payments were loans proceeds and which were for services.

13 23. In 2006, Montgomery provided a trust beneficiary with a spreadsheet of the Washington resident's
14 income and expenses for 2005. The spreadsheet indicated that the Washington resident had \$80,977 in
15 income for 2005. The spreadsheet listed \$92,531 in expenses for 2005. The expenses listed included a fee
16 of \$8,950 for services by Montgomery in 2005. The spreadsheet did not contain a value for the assets of the
17 trust.

18 24. In or about January 2006, Montgomery and his wife divorced. They sold their personal residence.
19 A portion of the proceeds from the residence totaling \$320,737 was deposited in the Washington resident's
20 Charles Schwab account.

1 25. Montgomery left Wachovia on February 17, 2006. He associated as an independent contractor
2 securities salesperson with Mutual Service Corporation on April 26, 2006. He became registered as an
3 investment adviser representative for Mutual Service Corporation on May 1, 2006.

4 26. In 2006, Montgomery wrote checks to himself or his dba Montgomery Capital Management from
5 the Washington resident's bank accounts. These checks had "POA services" on the memo line. Most
6 checks included the number of hours of services provided. Montgomery paid himself at a rate of \$145 an
7 hour. Montgomery wrote the following checks:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
1/3/06	Montgomery Capital Management	\$500
1/9/06	Michael Montgomery	\$2,500
1/16/06	Michael Montgomery	\$7,000
2/1/06	Michael Montgomery	\$600
2/2/06	Michael Montgomery	\$800
2/15/06	Michael Montgomery	\$2,610
3/1/06	Michael Montgomery	\$8,555
3/9/06	Michael Montgomery	\$580
3/15/06	Michael Montgomery	\$580
3/29/06	Michael Montgomery	\$8,120
4/6/06	Michael Montgomery	\$580
4/13/06	Michael Montgomery	\$5,800
4/28/06	Michael Montgomery	\$6,960
5/3/06	Michael Montgomery	\$1,450
5/11/06	Michael Montgomery	\$3,190
5/22/06	Michael Montgomery	\$217.50
5/25/06	Michael Montgomery	\$3,915
5/26/06	Michael Montgomery	\$7,250
6/12/06	Michael Montgomery	\$5,655
6/20/06	Michael Montgomery	\$580
6/21/06	Michael Montgomery	\$2,465
7/10/06	Michael Montgomery	\$5,800
7/16/06	Michael Montgomery	\$11,600
7/20/06	Michael Montgomery	\$725
7/26/06	Michael Montgomery	\$580
7/27/06	Michael Montgomery	\$3,480

1	8/1/06	Michael Montgomery	\$6,380
	8/4/06	Michael Montgomery	\$6,090
2	8/9/06	Michael Montgomery	\$507.50

3 **Total for POA Services in 2006: \$105,070.00**

4 27. Montgomery failed to produce a record detailing how he spent over 723 hours on Power of
5 Attorney services in 2006.

6 28. The Washington resident passed away on July 18, 2006. He was 90 years old.

7 Trust Administration

8 29. When the trustor of a living trust dies, the trust assets must be distributed by the successor trustee
9 to the beneficiaries as named in the trust document. In an estate or trust administration, a reasonable fee may
10 be paid to the trustee or administrator for services. Typically, fees are paid at the end of the estate or trust
11 administration, prior to the final distribution to the beneficiaries.

12 30. Following the death of the Washington resident, Montgomery began work on the Washington
13 resident's estate as trustee of the living trust. At the time of the resident's death, the trust held two Key Bank
14 accounts, a brokerage account at Charles Schwab, and some personal possessions.

15 31. Almost immediately, Montgomery began paying himself for services to the estate. Montgomery
16 wrote checks to himself from the Washington resident's account. These checks had "estate work" on the
17 memo line and included the number of hours spent. Montgomery paid himself at a rate of \$145 an hour.

18 Montgomery wrote the following checks:

	<u>Date</u>	<u>Payee</u>	<u>Amount</u>
19	8/14/06	Michael Montgomery	\$2,030
20	8/25/06	Michael Montgomery	\$7,975
21	9/5/06	Michael Montgomery	\$4,060

1	9/11/06	Michael Montgomery	\$1,160
	9/20/06	Michael Montgomery	\$1,160
2	10/2/06	Michael Montgomery	\$6,307.50
	10/10/06	Michael Montgomery	\$1,595
3	10/31/06	Michael Montgomery	\$12,470
	11/8/06	Michael Montgomery	\$6,090
4	11/14/06	Michael Montgomery	\$1,160
	11/20/06	Michael Montgomery	\$725
5	11/27/06	Michael Montgomery	\$5,220
	11/30/06	Michael Montgomery	\$10,730
6	12/6/06	Michael Montgomery	\$7,395
	12/11/06	Michael Montgomery	\$652.50
7	12/14/06	Michael Montgomery	\$6,960
	12/26/06	Michael Montgomery	\$6,525
8	1/3/07	Michael Montgomery	\$5,945
	1/22/07	Michael Montgomery	\$2,030
9	1/23/07	Michael Montgomery	\$362.50
	1/29/07	Michael Montgomery	\$8,990
10	2/7/07	Michael Montgomery	\$6,235
	2/13/07	Michael Montgomery	\$290
11	2/14/07	Michael Montgomery	\$2,610
	2/22/07	Michael Montgomery	\$2,175
12	2/28/07	Michael Montgomery	\$3,625
	3/7/07	Michael Montgomery	\$3,625
13	3/19/07	Michael Montgomery	\$8,700
	4/5/07	Michael Montgomery	\$4,930
14	4/18/07	Michael Montgomery	\$5,147.50
	5/3/07	Michael Montgomery	\$3,842.50
15	5/9/07	Michael Montgomery	\$5,220
	5/23/07	Michael Montgomery	\$1,740
16	5/29/07	Michael Montgomery	\$3,335
	5/31/07	Michael Montgomery	\$4,205
17	6/7/07	Michael Montgomery	\$6,525
	6/8/07	Michael Montgomery	\$6,815
18	6/11/07	Michael Montgomery	\$5,510
	6/12/07	Michael Montgomery	\$3,915
19	6/13/07	Michael Montgomery	\$3,190
	6/28/07	Michael Montgomery	\$4,495
20	7/6/07	Michael Montgomery	\$5,800
	7/12/07	Michael Montgomery	\$5,800
21	7/26/07	Michael Montgomery	\$4,930
	8/1/07	Michael Montgomery	\$7,975

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1	8/13/07	Michael Montgomery	\$1,450
	8/17/07	Michael Montgomery	\$4,495
2	8/28/07	Michael Montgomery	\$5,800
	9/6/07	Michael Montgomery	\$4,060

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Total Fees for Estate Work **\$225,982.50**

32. On June 28, 2007, Montgomery signed and filed a 2006 1041 estate income tax return for the Washington resident's estate. According to the return, the estate paid only \$1,595 in fiduciary fees in 2006.

33. Despite charging \$225,985.50 in fees for estate work, Montgomery did not complete the trust administration, did not retitle or distribute trust assets, did not prepare a trust or estate inventory, and could not produce a record of how he spent 1,558.5 hours on estate work.

34. The trust beneficiaries requested an accounting of the trust through their attorney in a letter dated June 21, 2007. Montgomery responded in an undated letter in which he stated that the value of the estate might only be \$200,000. However, he did not provide an accounting for the trust.

35. The trust beneficiaries filed a motion in Pierce County Superior Court on August 8, 2007 requesting an accounting of the estate. Montgomery failed to provide an accounting of the trust. Montgomery was removed as trustee by court order on September 21, 2007.

36. Both promissory notes signed by Montgomery have come due. Montgomery has made no additional payments to the estate on the amount due under the promissory notes.

Failure to Disclose Outside Business Activities

37. Under NASD Conduct Rule 3030, no registered individual shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with the employing firm, unless he has provided prompt written notice

1 to the employing firm. To comply with NASD Conduct Rule 3030, registered individuals must complete
2 and update annual outside business disclosures for their employing firms.

3 38. Montgomery did not disclose to Wachovia that he was acting as attorney in fact and trustee for the
4 Washington resident, nor did he disclose that he was receiving payment for these services. He did not
5 disclose that he had borrowed money from the Washington resident while the resident was his client at
6 Wachovia.

7 39. Montgomery did not disclose to Mutual Service Corporation that he was acting as attorney in fact
8 and trustee for the Washington resident, nor did he disclose that he was receiving payment for these services.

9 The Outside Business Activities form for Mutual Service Corporation includes the following questions:

10 While associated with the Broker/Dealer, have you provided fiduciary services (such as
11 acting as an executor, trustee, conservator, power of attorney or a guardian) for any
12 person (except for immediate family)?

....

13 While associated with the Broker/Dealer, have you been engaged in any other business
14 activity outside of your relationship with the Home Office either as a proprietor/owner,
15 partner, officer, director, employee, trustee, co-trustee, agent or otherwise? This
16 excludes your "Doing Business As" entity.

17 Montgomery answered "No" to both questions on his 2006 and 2007 Outside Business Activities forms.

18 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

19 CONCLUSIONS OF LAW

20 1. Michael D. Montgomery, as described above, engaged in one or more dishonest or unethical
21 practices in the securities business, as defined by WAC 460-22B-090, by failing to disclose outside
22 business activities to his registered firm as required by NASD Conduct Rule 3030, by borrowing money

1 from a client and failing to disclose it, and by converting funds from the client's estate. Such practices
2 are grounds for the suspension or revocation of Montgomery's securities salesperson and investment
3 adviser representative registration pursuant to RCW 21.20.110(1)(g).

4 **NOTICE OF INTENT TO REVOKE REGISTRATION**

5 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and
6 Conclusions of Law, the Securities Administrator intends to order that the securities salesperson and
7 investment adviser representative registration of Respondent Michael D. Montgomery be revoked.
8

9 **AUTHORITY AND PROCEDURE**

10 This Statement of Charges is entered pursuant to the provisions of RCW 21.20.110 and is subject to
11 the provisions of RCW 21.20.120 and RCW 34.05. The Respondent may make a written request for a
12 hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
13 HEARING accompanying the Statement of Charges. If the Respondent does not request a hearing in this
14 matter, the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact and
15 Conclusions of Law as final, and as described above in the Notice of Intent to Revoke Registration, enter
16 an order revoking Respondent's registration.

17 DATED AND ENTERED this 30th day of June, 2009.

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19 _____
20 MICHAEL E. STEVENSON
21 Securities Administrator

22 Approved by:

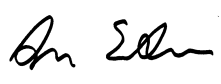
23 STATEMENT OF CHARGES AND NOTICE OF
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SUZANNE SARASON
Chief of Enforcement

JILL VALLELY
Enforcement Attorney