



State of Washington  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**

**IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Franchise Investment Protection Act of  
Washington by:**

**ROBERT GLENN HUBBARD, aka ROB  
HUBBARD, and PUR BEVERAGES,  
INC.,**

**Respondents.**

**Order No. S-17-2267-19-FO01  
OAH No. 12-2017-DFI-00048**

**FINAL DECISION AND ORDER**

THIS MATTER comes now before CHARLES E. CLARK, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), on Petition for Review (“Petition for Review”) dated May 28, 2019, by the Respondents, ROBERT GLENN HUBBARD, aka ROB HUBBARD (“Hubbard” or “Mr. Hubbard”) and PUR BEVERAGES, INC. (“Pur Beverages”).

**1.0 PROCEDURAL HISTORY**

On August 25, 2017, the Division of Securities (“Division”) of the Department issued a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist (“Statement of Charges”) to Respondents alleging that Respondents violated the Franchise Investment Protection Act of Washington, Chapter 19.100 RCW (“FIPA”) and that their violation of FIPA justified the entry of an Order to Cease and Desist under RCW 19.100.248 against each of the Respondents.

On or around December 14, 2017, the Respondents made a Request for Administrative Hearing, and the Statement of Charges was then referred to the Office of Administrative Hearings

("OAH") for adjudication. On December 18, 2017, OAH assigned this matter for hearing or other disposition before Administrative Law Judge Terry A. Schuh ("ALJ Schuh").

The adjudicative hearing was conducted on August 1, 2018, and January 16, 2019, before ALJ Schuh.<sup>1</sup> As the Initial Order indicates,<sup>2</sup> both parties timely submitted Post-Hearing Briefs. Respondents appeared pro se with Hubbard representing Pur Beverages. The Division was represented before ALJ Schuh by Ian McDonald, Esq., Assistant Attorney General ("AAG McDonald").

The record was closed on March 13, 2019, and the Initial Order was issued and served by mail on Tuesday, May 7, 2019. The Initial Order found that the conduct occurred as alleged in the Statement of Charges, that the conduct violated the FIPA, and that the Department was correct to order Respondents to cease and desist from offering and/or selling franchises in the State of Washington and/or to Washington residents unless the offers and/or sales complied with the FIPA.

On May 28, 2019, Hubbard filed Respondents' Petition for Review. On June 7, 2019, AAG McDonald, representing the Division, filed with the Director and served Respondents by mail and electronic mail the Division's Reply to Respondents' Petition for Review ("Reply to Petition").

## **2.0 RECORD ON REVIEW**

The record on review ("Record on Review") before the Director includes the entire OAH Record in the above-enumerated matter consisting, without limitation, of the Statement of Charges, the Application for Adjudicative Hearing of the Respondents, both parties' Closing Briefs, the Division's Post-Hearing Reply Brief, and the Initial Order, together with the Petition for Review, and the Reply to Petition.

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<sup>1</sup> Initial Order, Paragraph 3.1 at Page 2.

<sup>2</sup> Initial Order, Paragraph 3.6 at Page 2.

### 3.0 DIRECTOR'S CONSIDERATIONS ON REVIEW

#### 3.1 Does the Initial Order fail to address Respondents' closing brief and arguments?

Mr. Hubbard generally asserts that ALJ Schuh failed to address arguments made in Respondents' closing brief but does not specify the portions of the initial order to which Respondents' take exception, nor does he appear to identify a number of the arguments he believes were not addressed.

The Washington Administrative Procedure Act ("WAPA")<sup>3</sup> governs administrative adjudicative procedures. In addition, the Department has generally adopted, by means of the Department's Adjudicative Procedures,<sup>4</sup> the Model Rules of Procedure.<sup>5</sup> Both WAPA and the Model Rules of Procedure require that exceptions to an initial order refer to evidence of record that is relied upon to support the petition.<sup>6</sup> Specifically, "[t]he petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition."<sup>7</sup> While the Director, as reviewing officer, may reach his own factual and legal conclusions, which may differ from the Administrative Law Judge,<sup>8</sup> such findings of fact<sup>9</sup> and conclusions of law<sup>10</sup> must be based upon the same record. Therefore, to the extent Respondents' Petition for Review does not identify the arguments that were not addressed by the ALJ, they are not addressed here.

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<sup>3</sup> Chapter 34.05 RCW.

<sup>4</sup> Chapter 208-08 WAC, *esp.* WAC 208-08-020(1).

<sup>5</sup> Chapter 10-08 WAC.

<sup>6</sup> *See* RCW 34.05.464(5) and WAC 10-08-211.

<sup>7</sup> WAC 10-08-211(3).

<sup>8</sup> RCW 34.05.464.

<sup>9</sup> Specific Findings of Fact from the Initial Order are designated in this Final Decision and Order as "FOF."

<sup>10</sup> Specific Conclusions of Law from the Initial Order are referred to in this Final Decision and Order as "COL."

### 3.2 Does the Initial Order violate Mr. Hubbard's First Amendment right to free speech?

Mr. Hubbard states that the Craigslist posting, website information, and sample agreement are protected free speech, including commercial speech. He asserts that the only act that occurred was his post on an Internet forum and that did not violate any law. He asserts that the Department only has jurisdiction over acts that violate the laws and does not have jurisdiction or the authority to limit a person's constitutional rights to free speech. Further, Mr. Hubbard states that statutes cannot be enacted that will infringe on his right to freedom of speech.

As a general proposition, the Department does not have the authority to determine the constitutionality of the laws it is charged with enforcing; only the courts have that power.<sup>11</sup> The Superior Court, on judicial review of a final order of the Director, may hear arguments and rule on the constitutionality of the Department's orders.<sup>12</sup> Consistent with the authority of the highest tribunals of Washington State and federal jurisprudence,<sup>13</sup> the Director is of the view that if there truly are any constitutional questions in this case, the Department, as an executive branch *administrative agency*, is not the appropriate forum in which to consider them.<sup>14</sup>

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<sup>11</sup> See *Bare v. Gorton*, 84 Wn.2d 380, 383 (1974), citing *United States v. Kissinger*, 250 F.2d 940 (3d Cir. 1958); cert. denied, 356 U.S. 958 (1958). 3 K. Davis, *Administrative Law Treatise*, § 20.04, at p. 74 (1958); see also *Johnson v. Robison*, 415 U.S. 361, 368 (1974), quoting *Oestereich v. Selective Serv. System Local Bd. No. 11*, 393 U.S. 233, 242 (1968); accord, *Califano v. Sanders*, 430 U.S. 99, 109 (1977). See also, 73 C.J.S. *Public Administrative Law and Procedure* § 134.

<sup>12</sup> See RCW 34.05.570(3)(a).

<sup>13</sup> *Id.*

<sup>14</sup> Conf. *Metro. Dade Cnty. v. Dep't of Commerce*, 365 So.2d 432, 435 (Fla. Dist. Ct. App. 1978). This Final Decision and Order, as noted above, does not turn on the constitutionality of FIPA's advertising protections. However, Respondents should be aware that in the Director's view, invoking the First Amendment, if pursued on judicial review, is unlikely to prevail. The basic test of whether a government advertising regulation does not violate the First Amendment was enunciated by the U.S. Supreme Court in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 100 S.Ct. 2343 (1980). In the Director's view, the Respondents would have to prove under the *Central Hudson* test that (1) their advertising was not misleading, (2) that the Department's interest in protecting the public under FIPA is insignificant, (3) that FIPA does not protect the public, and (4) that FIPA is more extensive or harsh than necessary.

### **3.3 Does FIPA govern both pre-sale and post-sale activities?**

Respondent concedes that FIPA governs activities both before the sale, during the sale, and after the sale. However, Mr. Hubbard contends a “sale” is required before FIPA has authority to regulate the activities that led to the sale. He asserts that there is no support for the ALJ Schuh’s Conclusion of Law COL 5.2 in either case law or evidence in the record.

However, Respondents’ petition fails to cite any evidence that supports the contention that a sale is required for FIPA to apply, other than a mere assertion that ALJ’s Schuh’s conclusions of law are not supported by case law or evidence in the record. As ALJ Schuh correctly pointed out in COL 5.6, the terms of FIPA make it unlawful for a franchisor to *offer* to sell a franchise unless it has been registered or is exempt.<sup>15</sup> By its terms, FIPA applies to activity that does not necessitate the sale of a franchise. Therefore, the Director agrees with ALJ Schuh’s determination in COL 5.2 that FIPA governs both pre-sale and post-sale activities.

### **3.4 Was the ALJ’s interpretation of the term “grants” correct?**

Respondents’ petition contends that the ALJ’s interpretation of the term “grants” in COL 5.16 and COL 5.17 was actually a redefinition of the term instead of an interpretation. However, Mr. Hubbard did not point to or provide any evidence to support his contention that ALJ Schuh’s interpretation was incorrect.

ALJ Schuh’s COL 5.17 holds that “grants” refers to persons who have granted, but also those who offer or advertise to grant, a franchise. In support of this interpretation ALJ Schuh follows traditional rules of statutory construction articulated by the Washington Supreme Court, that statutes should be construed so that no part is rendered superfluous.<sup>16</sup> Since FIPA’s purpose

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<sup>15</sup> RCW 19.100.020(1).

<sup>16</sup> *State ex rel. Evergreen Freedom Foudnation v. Washington Education Association*, 140 Wn.2d 615 (2000).

is to prevent sales abuses and to regulate the franchisor-franchisee relationship, the only interpretation of the word “grants” that serves both purposes is one that applies to both persons who offer or advertise to grant *and* those who have granted a franchise. Therefore, the Director finds no error in ALJ Schuh’s interpretation of the word “grants.”

### **3.5 Did the Respondents fail give required disclosures?**

Again, Respondents’ petition relies on an interpretation of FIPA that requires a sale of a franchise to occur before FIPA would apply. Mr. Hubbard asserts that franchisor has until a sale is actually made or an agreement for a sale is reached to provide the required disclosures. Alternatively, Mr. Hubbard states that he did explain the basis for his assertions because a distributor selling 300 cases of product would recoup their initial investment. He further states that FOF 4.22 is invalid, arguing that, since he is the manufacturer and the only party responsible for setting the wholesale and retail prices, he does not have to spell out his costs and markups.

Mr. Hubbard fails to provide any evidence to support his assertion that it can’t be determined if disclosures weren’t properly given until after a sale has occurred or an agreement for sale is reached. ALJ Schuh’s COL 5.21 correctly points out that FIPA requires an offer to not include untrue statements of material fact or fail to include statements that would make a material fact not misleading.<sup>17</sup> COL 5.22 highlights a multitude of assertions made by Respondents that were unsupported by any evidence. Other than Mr. Hubbard’s bare assertion that initial investments will be recouped after selling 300 cases, Respondents did not put forward any evidence to substantiate these claims. Additionally, although Mr. Hubbard is correct that he is not required to explain his basis for the asserted prices, FOF 4.22 is correct in that it merely states

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<sup>17</sup> RCW 19.100.170(2).

that “Pur Beverages did not explain its basis for asserted wholesale and retail prices.” There is no error there to correct. Therefore, ALJ Schuh correctly determined in COL 5.23 that Respondents violated FIPA by failing to give the required disclosures.

### **3.6 Was the evidence relied on in the Initial Order improperly admitted?**

Respondents’ continue to object that the evidence used in the hearing and relied upon by ALJ Schuh in his Initial Order should not have been admitted based on grounds of hearsay and lack of authentication.

**3.6.1 Admissibility of Hearsay Evidence.** Hearsay evidence is permitted in administrative hearings under WAPA:

“Evidence, *including hearsay evidence*, is admissible if in the judgement of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affair.”<sup>18</sup>

[Emphasis added.]

The majority of the evidence objected to by Respondents was either created or controlled by Mr. Hubbard,<sup>19</sup> or from reputable third-party websites.<sup>20</sup> A reasonably prudent person would likely rely on information provided by the Respondents themselves, or from reputable internet sources, particularly when the information is later corroborated by Respondents.<sup>21</sup>

The Respondents did not offer any exhibits or evidence in rebuttal during the hearing or in their Petition to show why the exhibits submitted by the Division should not be admitted on the

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<sup>18</sup> RCW 34.05.452.

<sup>19</sup> Exhibits 4-8: Craigslist posting, website, and distribution agreement.

<sup>20</sup> Exhibits 1-2: LinkedIn and Oregon Business Registry Search tool.

<sup>21</sup> Exhibit 8: Mr. Hubbard’s email to the Division stating he is the owner of Pur Beverages and he placed the advertisement on Craigslist.

basis of hearsay. Therefore, the Director finds no error in ALJ Schuh's admission of the Division's exhibits.

**3.6.2 Authentication of Evidence.** ALJ Schuh instructed the parties to file an exhibit list and a fully marked set of exhibits<sup>22</sup> pursuant to the following:

“Where practicable, the presiding officer may order: (a) That all documentary evidence which is to be offered during the hearing... be submitted... sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence; . . . (c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.”<sup>23</sup>

The Division timely filed its exhibit list and exhibits, providing Respondents ample time to provide written objection to their admission prior to the hearing. Respondents did not object to the authenticity of the documents prior to the hearing and did not show any good cause for failure to have filed such written objection during the hearing.

The Respondents did not offer any exhibits or evidence in rebuttal during the hearing to show why the exhibits submitted by the Division should not be admitted on the grounds of authentication. Therefore, the Director finds no error in ALJ Schuh's admission of the Division's exhibits.

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<sup>22</sup> Prehearing Conference Order, page 4.

<sup>23</sup> WAC 10-08-140(2).



**3.7 Did the ALJ mischaracterize Respondent Hubbard's testimony about the wholesale cost of the product?**

Respondents' petition contends that ALJ Schuh mischaracterized Mr. Hubbard's testimony in COL 5.15 as to the wholesale price. COL 5.15 reads, in relevant part:

"A franchise fee is a fee that the grantee agrees to pay in order to enter into business. RCW 19.100.010(8). Here, by the terms of the offering on Craigslist and the Distribution Agreement, the grantee must pay \$12,900 in order to enter into the business. . . . RCW 19.100.010(8) identifies eight circumstances that do not qualify as a franchise fee. . . . Respondents argued that one [applies]: "the purchase or agreement to purchase goods at a bona fide wholesale price." RCW 19.100.010(8)(a). Here, the purchase price of \$12,900 includes an exclusive distribution contract, 600 cases of product, and marketing materials, as expressed in the Craigslist advertisement, and the cost to the grantee of that 600 cases of product is \$7,056. Accordingly, only part of the purchase price is for the purchase of goods at wholesale. The Respondents argued that the wholesale price is the price at which the distributor under agreement with the Respondents sells to another entity, and that price when applied to the 600 case[s] exceeds the fee of \$12,900. . . . Given that chapter 19.100 addresses only franchise sales and relationships, the only wholesale transaction it is concerned with is the wholesale transaction between franchisors and franchisees or prospective franchisees. . . . Thus, here, the purchase fee includes more than the mere cost of goods. . . . The fee is a franchise fee."<sup>24</sup>

Respondents' petition asserts that Mr. Hubbard testified that the wholesale price to distributors was \$1.05-\$1.48 per can, and not, as was stated in COL 5.15, the price the entrepreneur would sell to another entity. Mr. Hubbard points out that he is the manufacturer so his testimony should be relied upon. He further asserts that the ALJ should not have concluded that the advertised price was the conclusive end price because parties could negotiate on the final purchase price and, since no sale actually occurred, it was impossible to conclude the sale price was \$12,900.

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<sup>24</sup> Initial Order, page 8, COL 5.15.

Despite Mr. Hubbard's argument about sale price and price per can, the Craigslist posting listed \$12,900 as the sale price and Respondents' website listed various wholesale costs of anywhere from \$0.49 cents to \$0.69 cents per can. As discussed above, the Director finds it reasonable to rely on the prices listed on Respondents' own posting and website. Even supposing the price per can was \$0.69 cents (the highest listed on Respondents' website), the total for 600 cases of product would be \$9,936,<sup>25</sup> still below the \$12,900 list price in the Craigslist posting.

Alternatively, Mr. Hubbard puts forward an argument that there is no "hidden franchise fee" because there was no value attributed to the tangible items and rights the grantee would receive in exchange for the \$12,900 list price. Mr. Hubbard relies on the fact that the Division did not put forth any evidence at the hearing as to the value of the point of sale displays, door clings, table tents, and business cards. The Division was under no obligation to put forth any evidence of the value of the tangible items, and Respondents did not put forward their own evidence. In addition, the Division submitted evidence via the Craigslist posting and franchise agreement that the fee did not make any attempt to unbundle the costs associated with the other aspects of the offered business relationship. Instead, the listing was an all-in-one offer, with no apparent way for an interested party to sell the beverages as a stand-alone product. Therefore, regardless of the price of a can, the fee listed in the Craigslist posting is a "franchise fee" and the Director finds no error with ALJ's COL 5.15.

### **3.8 Were the Respondents entitled to a waiver pursuant to WAPA?**

Respondents' petition contends that failing to register is the type of activity that requires the Department to give them a waiver under WAPA, which provides, in relevant part, that ". . .

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<sup>25</sup> \$0.69 x 24 x 600 = \$9,936.

agencies shall waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business.”<sup>26</sup> A paperwork violation under WAPA is defined as a “violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business.”<sup>27</sup> However, the same section of WAPA also states that:

“Nothing in this section shall be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.”<sup>28</sup>

FIPA’s requirements to register a franchise offer in advance and comply with disclosure requirements are not paperwork violations. FIPA’s purpose is greater than mere collection of information by an agency. Instead, FIPA’s requirements are more akin to requirements of a permit, license, or authorizing document. As ALJ Schuh correctly noted in CoL 5.33, the Respondents needed to register the franchise offer in advance and comply with the disclosure requirements of FIPA. Therefore, the Director also finds that Respondents were not entitled to a waiver under RCW 34.05.110. In addition, ALJ Schuh correctly pointed out that the Division’s proposed remedy was a correction of the violation, not a penalty.<sup>29</sup>

### **3.9 Was the Craigslist posting an advertisement made to Washington residents?**

Respondents assert that the Initial Order failed to address their arguments in Respondents Closing Brief that Craigslist does not fit the definition of advertisement, or, if it is an advertisement, that it satisfies the elements for FIPA’s exception. However, Respondents do not

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<sup>26</sup> RCW 34.05.110(2).

<sup>27</sup> RCW 34.05.110(9)(b).

<sup>28</sup> RCW 34.05.110(6).

<sup>29</sup> COL 5.34-5.35.

point to any specific findings of fact or conclusions of law in their Petition for Review to support these contentions. FIPA's exception essentially provides that an advertisement made either by publication or broadcast/transmission, which is not specifically directed primarily to Washington State, is not an offer made in Washington State.<sup>30</sup>

ALJ Schuh thoroughly analyzed the Craigslist advertisement and the exceptions under FIPA in COL 5.24 through 5.27. The advertisement at issue appeared in the *Seattle* Craigslist listing rather than the Craigslist listing in another city. Craigslist provides *local* classifieds for a particular city or region of a state. There is no nationwide Craigslist.<sup>31</sup> Therefore, the Director agrees with ALJ Schuh's conclusion that the Seattle Craigslist listing was an advertisement directed to Washington residents. The FIPA exception does not apply.

### **3.10 Were there errors in FOF 4.13 and FOF 4.27 of the Initial Order?**

The Director finds that FOF 4.13 of the Initial Order mistakenly indicates that the Craigslist ad had links to Pur Beverages' website and to the distribution agreement. The ad did not contain links, but it listed Respondent's URL address ([www.purbeverages.com/Distribute-PUR](http://www.purbeverages.com/Distribute-PUR)) in several locations. The ad directed interested parties to visit the URL address to find more information on the opportunity. Accordingly, FOF 4.13 should be amended to read, as follows:

"The Craigslist ad listed Respondent Pur's URL address and directed interested parties to visit the website to learn more information and access the distribution agreement. Cordell Testimony."

The Director further finds that in discussing the proposed distribution agreement, FOF 4.27 in the Initial Order mistakenly states "the purchaser purchased the product." As Respondent

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<sup>30</sup> RCW 19.100.020(4)(a)-(b).

<sup>31</sup> <https://www.craigslist.org/about/sites>.

Hubbard correctly points out, there was never a purchase of the product by anyone. Accordingly, FOF 4.27 should be amended to read, as follows:

“The agreement provided that the \$12,900 initial payment entitled the purchaser to an exclusive territory, 600 25-pack cases of product, and marketing materials and support. Cordell Testimony; Ex. 7, p. 10. The listed cost of the product, per can, was 49 cents per can, plus shipping. Ex. 7, p. 13. The cost of the product was, therefore, \$7,056,<sup>32</sup> plus shipping.”

#### 4.0 FINDINGS OF FACT

The Director having considered the Record on Review, together with the Petition for Review and Reply to Petition, the Director does now make the following Findings of Fact, consistent with Section 3.0 above:

The Director hereby affirms FOF 4.1 through 4.12, 4.14 through 4.26, and 4.28 through 4.31 of the Initial Order and incorporates by this reference these Findings of Fact of the Initial Order in this Final Decision and Order.

The Director hereby amends FOF 4.13 and FOF 4.27 of the Initial Order and by the following amendments does find, as follows:

4.13 “The Craigslist ad listed Respondent Pur’s URL address and directed interested parties to visit the website to learn more information and access the distribution agreement. Cordell Testimony.”

4.27 The agreement provided that the \$12,900 initial payment entitled the purchaser to an exclusive territory, 600 25-pack cases of product, and marketing materials and support. Cordell

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<sup>32</sup> Calculated as  $.49 \times 24 \times 600 = 7056$ .

Testimony; Ex. 7, p. 10. The listed cost of the product, per can, was 49 cents per can, plus shipping. Ex. 7, p. 13. The cost of the product was, therefore, \$7,056,<sup>33</sup> plus shipping.

## **5.0 CONCLUSIONS OF LAW**

The Director, having considered the Record on Review, together with the Petition for Review, the Reply to Petition, and applying the Findings of Fact contained in Section 4.0 above, the Director does now make Conclusions of Law consistent with the Director's considerations in Section 3.0 above, and affirms in their entirety COL 5.1 through 5.41, inclusive, of the Initial Order and makes each of these conclusions of law a part of this Final Decision and Order.

## **6.0 AFFIRMATION OF INITIAL ORDER**

Except as set forth in the amended Findings of Fact as set forth in Section 4.0 above, the Initial Order of ALJ Schuh is affirmed.

## **7.0 FINAL DECISION AND ORDER**

Based upon the Findings of Fact, Conclusions of Law, and Affirmation of Initial Order set forth above, NOW, THEREFORE, IT IS HEREBY ORDERED:

**7.1 Denial of Petition for Review.** The Petition for Review of Respondents' ROBERT GLENN HUBBARD, aka ROB HUBBARD and PUR BEVERAGES, INC., is denied.

**7.2 Affirmation of Initial Order.** The Initial Order is affirmed as set forth in Section 6.0 above.

**7.3 Permanent Cease and Desist Order.** Respondents ROBERT GLENN HUBBARD, aka ROB HUBBARD and PUR BEVERAGES, INC., shall permanently cease and desist from any further violations of RCW 19.100.020 and RCW 19.100.170.

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<sup>33</sup> Calculated as  $.49 \times 24 \times 600 = 7056$ .

**7.4 Reconsideration.** Pursuant to RCW 34.05.470, Respondents have the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondents. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

**7.5 Stay of Order.** The Director has determined not to consider a petition to stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

**7.6 Judicial Review.** Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

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7.7 Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

Dated at Tumwater, Washington, on August 28, 2019.

WASHINGTON STATE DEPARTMENT  
OF FINANCIAL INSTITUTIONS

By: 

Charles E. Clark, Director




**NOTICE TO THE PARTIES**

Judicial Review of the FINAL DECISION AND ORDER is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that the above FINAL DECISION AND ORDER has been served upon the following parties on August 28, 2019, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT  
OF FINANCIAL INSTITUTIONS

By:   
Susan Putzier  
Executive Assistant

**Mailed to the following:**

Ian S. McDonald, Esq.  
Assistant Attorney General  
ATTORNEY GENERAL OF WASHINGTON  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, Washington 98504-0100

Pur Beverages, Inc.  
Robert Hubbard  
21189 W Coronado Rd  
Buckeye, AZ 85396

1 **STATE OF WASHINGTON**  
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**  
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING ) Order No. S-17-2267-17-SC01  
5 Whether there has been a violation of the )  
6 Franchise Investment Protection Act of ) STATEMENT OF CHARGES AND NOTICE OF INTENT  
7 Washington by: ) TO ENTER ORDER TO CEASE AND DESIST  
8 )  
9 Robert Glenn Hubbard, a.k.a. Rob Hubbard, and )  
10 Pur Beverages, Inc.; )  
11 )  
12 Respondents. )

13 **THE STATE OF WASHINGTON TO:** **Robert Glenn Hubbard, a.k.a. Rob Hubbard and Pur**  
14 **Beverages, Inc.,**

15 **STATEMENT OF CHARGES**

16 Please take notice that the Securities Administrator for the state of Washington has reason to believe that the  
17 Respondents, Robert Glenn Hubbard, a.k.a. Rob Hubbard, and d.b.a. Pur Beverages, Inc., (collectively referred to as  
18 “Pur Beverages”) have each violated the Franchise Investment Protection Act of Washington, RCW 19.100, and that  
19 their violations justify the entry of an order of the Securities Administrator under RCW 19.100.248 against each to  
20 cease and desist from such violations. The Securities Administrator finds as follows:

21 **TENTATIVE FINDINGS OF FACT**

22 **I.**

23 Parties

- 24 1. Pur Beverages, Inc. (“Inc.”) was an Oregon corporation that was administratively dissolved in  
25 February, 2017.
- 26 2. Robert Glenn Hubbard, a.k.a. Rob Hubbard, is the founder, owner, Chief Executive Officer and  
27 President of Pur Beverages, Inc. Mr. Hubbard resides in Arizona.

28 **II.**

29 Background

- 30 3. From at least 2015 to present, Pur Beverages has owned and operated a beverage business that sells  
31 products that are marketed as a “healthy and natural alternative to modern energy drinks.” Pur Beverages further

1 describes its products as being “designed using key vitamins and minerals, fruit extracts and other natural ingredients  
2 that support the body by providing energy naturally...” Pur Beverages has marketed its natural energy and flavored  
3 water products through a chain of distributors, who are granted an exclusive territory in which to make wholesale  
4 and retail sales of their products. Pur Beverages has offered distributorships through its website at:

5 <http://purbeverages.com/distribute-pur>.

6 4. In 2015, Rob Hubbard, as “President and CEO” of Pur Beverages, posted an online advertisement on  
7 a third party website in which he represented that “Pur Beverages has 25 franchise distribution centers across the  
8 country...” and “we are now expanding into your market as well. Since February of 2015, we have set up new  
9 distributorships in 25 new areas, and plan to have 75 by the end of 2016.”

10 Nature of the Offering

11 5. On or about August 6, 2017, Pur Beverages offered Washington residents a franchise opportunity in  
12 which it would grant a buyer the right to use the Pur Beverages trademark for an initial capital investment fee of  
13 \$12,900, which included and provided buyers with marketing materials and support. Pur Beverages made the offer  
14 through an advertisement in the Seattle Craigslist that was titled:

15 **Beverage Distribution Business For Sale – Franchise Territory - \$12900 (Seattle)**

16 6. In the Craigslist advertisement, Pur Beverages further described the business as having a low initial  
17 investment with a large revenue stream. Pur Beverages claimed that the offer of the distributorship had been designed  
18 to be affordable and virtually risk free. Hubbard described the Pur Beverages’ name as highly recognizable and  
19 respected. The advertisement stated that the name “Pur Beverages” was trademarked through the U.S. Patent Office  
20 and that “Owning the rights to such in your local market is invaluable.” Pur Beverages included in the purchase price  
21 of the business an “exclusive distribution contract for all of its current and future products, 600 cases of product and  
22 marketing materials, to include point of sale displays, door clings, table tents, and business cards.” Pur Beverages  
23 stated that they offered a buyer of the opportunity extensive phone conferencing and support to assist in building the  
24 brand. Pur Beverages invited prospective purchasers to visit the website at <http://purbeverages.com/Distribute-PUR>

1 where they could review the distribution contract, order a sample case of the product and fill out an application and  
2 non-disclosure agreement to be considered for the investment opportunity.

3  
4 7. On August 11, 2017, the Securities Division submitted to Pur Beverages a “Distribution Partner  
5 Inquiry Form” found on the “Franchise Ownership And/Or Employment” tab on the Pur Beverages website. Pur  
6 Beverages responded with an email message with further instructions on the application process that included a copy  
7 of the proposed purchase agreement in which it granted the buyer “...the right and license, during the term of this  
8 Agreement, to use its trademark, trade dress, and Product images to promote the goodwill and sale of the Products in  
9 the Territory...” Exhibit B to the purchase agreement explained that the \$12,900 initial payment entitled the buyer to  
10 an exclusive territory, 600 cases of beverages, and marketing materials.

### 11 III.

#### 12 Violations

13 8. In addition to claiming that the business is virtually risk free in its Craigslist advertisement, Pur  
14 Beverages claims on its webpage that based “from the price of the opportunity and what you get for the price, there is  
15 no risk. Once you sell through the first 300 cases of product, you have recovered your entire business investment.”  
16 Pur Beverages provided estimated profits to a prospective purchaser and claimed that the profits ranged from “\$0.71  
17 per Can” to “\$1,704 per Pallet” for sales to wholesale customers and profits of “\$1.30 per Can” to “\$3,120 per Pallet”  
18 for sales to retail customers.

19 9. In making claims about the risks and profitability of the proposed business in the Craigslist  
20 advertisement and its webpages, Pur Beverages did not provide substantiation for the financial performance  
21 representations and omitted material facts relating to the claims and risks.

### 22 IV.

#### 23 Registration

24 10. Respondents, Robert Glenn Hubbard, d.b.a. Pur Beverages, Inc. and Pur Beverages, LLC, are not  
25

1 currently registered to offer and sell franchises in the state of Washington and have not previously been so registered.

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

3 **CONCLUSIONS OF LAW**

4 **I.**

5 The offer or sale of Pur Beverages distributorships described above constitute the offer and/or sale of a  
6 franchise as defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

7 **II.**

8 The offer or sale of said franchises is in violation of RCW 19.100.020 because no registration for such offer  
9 and/or sale by Respondents Robert Glenn Hubbard and Pur Beverages, Inc. was on file with the Securities  
10 Administrator for certain time periods when offers and /or sales occurred.

11 **III.**

12 The offer and/or sale of said franchises were made in violation of RCW 19.100.170 because Respondents  
13 omitted to disclose material facts about risks and financial performance representations made.

14 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

15 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends  
16 to order that Robert Glenn Hubbard, Pur Beverages, Inc., and their agents and employees each shall cease and desist  
17 from violations of RCW 19.100.020 and RCW 19.100.170.

18 **AUTHORITY AND PROCEDURE**

19 This Order is entered pursuant to the provisions of RCW 19.100.248 and is subject to the provisions of Chapter  
20 34.05 RCW. Robert Glenn Hubbard and Pur Beverages, Inc. may each make a written request for a hearing as set  
21 forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
22 order. If a respondent does not request a hearing within the allowed time, the Securities Administrator intends to adopt  
23 the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to cease and desist permanent  
24

1 as to that respondent.

2 Signed and Entered this 25th day of August, 2017.

3  
4 

5 William M. Beatty  
6 Securities Administrator

7 Approved by:

8 Presented by:

9 

10 Suzanne Sarason  
11 Chief of Enforcement

12 

13 Martin Cordell  
14 Financial Legal Examiner

15 Reviewed by:

16 

17 Jack McClellan  
18 Financial Legal Examiner Supervisor