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

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IN THE MATTER OF DETERMINING ) Order No.: S-13-1304-14-CO01  
whether there has been a violation of the )  
Franchise Investment Protection Act of ) CONSENT ORDER  
Washington by: )  
)  
FRESH HEALTHY VENDING, LLC, )  
)  
Respondent. )

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On February 11, 2014, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist (“Statement of Charges”) S-13-1304-14-SC01 against FRESH HEALTHY VENDING, LLC (hereafter, “Respondent”). Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and Respondent, FRESH HEALTHY VENDING, LLC, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondent, FRESH HEALTHY VENDING, LLC, neither admits nor denies the Findings of Fact or Conclusions of Law as stated below.

**FINDINGS OF FACT**

**Respondent**

1. Respondent Fresh Healthy Vending, LLC (“FHV”) is a California LLC with its principal place of business at 9605 Scranton Road, #801, San Diego, CA 92121. FHV offers and sells vending machine franchises that sell healthy and organic snacks and beverages.

**Prior Enforcement Actions**

2. On May 30, 2012, the Securities Division entered Consent Order No. S-11-0712-12-CO01 against FHV and its former CEO, Jolly Backer (“FHV Consent Order”). The Securities Division alleged that FHV made untrue statements of material fact and/or omitted material facts by failing to disclose the litigation history of its officers in the franchise disclosure document (“FDD”) that it filed with the Securities Division.

3. In the FHV Consent Order, FHV agreed to cease and desist from violating RCW 19.100.080 and RCW 19.100.170 of FIPA.

4. On June 5, 2012, the Securities Division entered Consent Order No. S-12-0911-12-CO01 against FHV’s predecessor, FHV Holdings Corp. (“FHVHC”) (“FHVHC Consent Order”). The Securities Division alleged that FHVHC violated the Business Opportunity Fraud Act of Washington, Ch. 19.110 RCW, by selling unregistered business opportunities to several Washington State residents and failing to provide prospective purchasers with material information about the business, including a disclosure document.

**Misrepresentations and Omissions**

1           5. A franchisor is required to disclose in its FDD whether the franchisor has pending against it an  
2 administrative action alleging a violation of a franchise law or alleging fraud.

3           6. On April 9, 2012, FHV emailed its FDD to a Washington State resident who was interested in becoming  
4 a franchisee (“Offeree A”). At that time, FHV was already in discussions with the Securities Division regarding the  
5 FHV Consent Order. FHV failed to disclose this pending administrative action in the FDD that it provided to Offeree  
6 A.

7           7. A franchisor is also required to disclose in its FDD whether the franchisor or a predecessor is subject to a  
8 currently effective injunctive or restrictive order or decree resulting from a concluded action brought by a public  
9 agency and relating to the franchise or to state franchise, trade regulation or trade practice laws.

10          8. On June 16, 2012, FHV emailed a copy of its FDD to a Washington State married couple who were  
11 interested in becoming a franchisee (“Franchisee A”). Franchisee A subsequently purchased an FHV franchise. On  
12 June 20, 2012, FHV emailed its FDD to another Washington State resident who was also interested in becoming a  
13 franchisee (“Offeree B”).

14          9. FHV failed to disclose the FHV and FHVHC Consent Orders in the FDDs that it provided to Franchisee  
15 A and Offeree B. In these FDDs, FHV identified FHVHC as a predecessor.

**Registration Status**

16          10. FHV was initially registered to offer and sell its franchises in Washington State from June 1, 2010 to  
17 April 1, 2012, when its registration lapsed. FHV was not registered to offer and sell franchises again in Washington  
18 State until November 9, 2012. FHV has been registered to offer and sell its franchises in Washington State since that  
19 date.

20          11. There was no notification of exemption on file with Washington State during the period that FHV was  
21 unregistered, between April 1, 2012 and November 9, 2012.

**Unregistered Offers of a Franchise**

22          12. FHV was unregistered when it emailed its FDD to Offeree A and Offeree B on April 9 and June 20,  
23 2012, respectively.

**CONCLUSIONS OF LAW**

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

25          1. The offer and/or sale of franchises described above constitute the offer and/or sale of a franchise as  
defined in RCW 19.100.010(6), RCW 19.100.010(12), and RCW 19.100.010(17).

          2. The offers of said franchises, as described in Paragraph 12, are in violation of RCW 19.100.020 because  
no registration for such offers by FHV was on file with the Securities Administrator of the state of Washington at the  
time such offers were made.

1 3. The offers and sale of said franchises, as described in Paragraphs 6 and 8, are in violation of RCW  
2 19.100.170(2) because FHV made untrue statements of material facts and/or omitted material facts necessary in order  
3 to make the statements made in light of the circumstances under which they were made not misleading by failing to  
disclose required litigation history in the FDDs that FHV provided to Franchisee A and Offerees A and B.

4 4. The offers and sale of said franchises, as described in Paragraphs 6 and 8, are in violation of RCW  
5 19.100.170(5) because FHV violated the Consent Order that the Securities Division entered against it on May 30,  
2012.

6 **CONSENT ORDER**

7 Based upon the foregoing and finding it in the public interest:

8 IT IS AGREED AND ORDERED THAT Respondent, FRESH HEALTHY VENDING, LLC, their agents  
9 and employees shall each cease and desist from offering or selling franchises in violation of RCW 19.100.020, the  
registration section of the Franchise Investment Protection Act of the state of Washington.

10 IT IS FURTHER AGREED AND ORDERED that Respondent, FRESH HEALTHY VENDING, LLC, their  
11 agents and employees shall each cease and desist from violating RCW 19.100.170, the anti-fraud section of the  
12 Franchise Investment Protection Act of the state of Washington.

13 IT IS FURTHER AGREED that Respondent, FRESH HEALTHY VENDING, LLC shall reimburse the  
14 Securities Division \$7,500 for its costs of investigation of this matter payable prior to the entry of this Consent  
Order.

15 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

16 IT IS FURTHER AGREED that Respondent, FRESH HEALTHY VENDING, LLC, enters into this Consent  
17 Order freely and voluntarily and with full understanding of its terms and significance.

18 IT IS FURTHER AGREED that in consideration of the foregoing, FRESH HEALTHY VENDING, LLC,  
19 waives their right to a hearing and to judicial review of this matter.

20 Signed this \_\_9th\_\_ day of \_\_June\_\_\_\_, 2014.

21 Signed by:

22 FRESH HEALTHY VENDING, LLC

23  
24 By \_\_\_/s/\_\_\_\_\_  
ALEX KENNEDY  
25 Chief Executive Officer

1 Approved as to form by:

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3 \_\_\_\_\_/s/\_\_\_\_\_

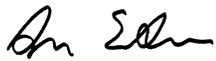
4 JAMES M. MULCAHY, CA Bar No. 213547  
Attorney for Respondent Fresh Healthy Vending, LLC

5 SIGNED and ENTERED this 2nd day of July, 2014.

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10 WILLIAM M. BEATTY  
Securities Administrator

11 Approved by:

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15 SUZANNE SARASON  
Chief of Enforcement

11 Presented by:

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15 HUONG LAM  
Financial Legal Examiner

16 Reviewed by:

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18 \_\_\_\_\_  
19 JACK MCCLELLAN  
Financial Legal Examiner Supervisor