# STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

IN THE MATTER OF DETERMINING whether there has been a violation of the Franchise Investment Protection Act of	) Order No.: S-14-1576-15-CO01 )
	) CONSENT ORDER
Washington by:	)
911 RESTORATION FRANCHISE, INC.;	)
Respondent.	

Pursuant to the Franchise Investment Protection Act of Washington, RCW 19.100, the Securities Division and Respondent, 911 Restoration Franchise, Inc., do hereby enter into this Consent Order in settlement of the matters alleged herein. Respondent 911 Restoration Franchise, Inc. neither admits nor denies the Findings of Fact or Conclusions of Law as stated below.

## FINDINGS OF FACT

# Respondent

1. 911 Restoration Franchise, Inc. ("911 Restoration") is a California corporation, established on March 15, 2007, with its principal place of business in Van Nuys, California. 911 Restoration was formed for the purpose of selling 911 Restoration franchises in the United States and Canada.

## **Background and Related Party**

- 2. 911 Restoration Enterprise, Inc. is a California corporation which owns 911 Restoration's headquarters building. As of 2009, it owned the trademarks for "911 Restoration" and the related logo. It has since transferred the marks to 911 Restoration, the franchisor entity.
- 3. 911 Restoration is a franchisor which sells water, fire, and mold damage restoration franchises. Franchisees earn money by providing restoration and cleaning services for various types of building damage, including flooding, fire, mold, and sewage backup damage. The original 911 Restoration location has operated since approximately 1978. As a franchisor, 911 Restoration has sold franchises in various locations throughout the United States and Canada since approximately 2008.

## Registration and Sale History in Washington

4. 911 Restoration applied to the Securities Division ("the Division") for registration to sell franchises on or about August 18, 2009. In Exhibit E of the Franchise Disclosure Document ("FDD") accompanying the application, 911 Restoration represented that there were no existing franchisees. Item 20 of the FDD also included a table CONSENT ORDER 1 DEPARTMENT OF FINANCIAL INSTITUTIONS

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

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entitled "Projected Openings as of December 31, 2009." This table included a column with the heading "Projected New Franchised Outlets in the Next Fiscal Year." The projected openings did not include Washington. The table also included a column headed "Franchise Agreements Signed But Outlet Not Opened." Washington was not listed in this category.

- 5. On December 3, 2009, the Division granted 911 Restoration a permit to sell franchises in Washington. 911 Restoration did not apply to renew its registration, and the permit lapsed on December 3, 2010.
- 6. 911 Restoration applied again to the Division for registration to sell franchises on or about September 8, 2014. In the application, 911 Restoration included two copies of a rescission offer letter ("the Rescission Offer"), dated July 7, 2014, to a Washington franchisee ("Investor A").
- 7. In the Rescission Offer, 911 Restoration stated that it was "offering rescission to [Investor A] for purchasing an unregistered franchise to be located in Washington." 911 Restoration indicated that Investor A had signed a Franchise Agreement ("the Franchise Agreement") with it on February 24, 2009, and that it had "received \$15,000 USD from [Investor A] for a territory in Seattle." 911 Restoration further stated that, if Investor A elected to rescind and terminate the franchise relationship, it would return the franchise fee, and included a form by which Investor A could elect either to remain a franchisee or rescind the Franchise Agreement. Investor A signed the form on August 7, 2014, electing to continue as a franchisee. Investor A currently continues to operate the franchise.
- 8. In the Franchise Agreement, in exchange for a payment of \$15,000, 911 Restoration grants Investor A "the exclusive franchise and license to operate a 911 Restoration Business within [Investor A's] Territory," and allows Investor A to use 911 Restoration's copyrights, trademarks, and trade secrets within that territory. The Franchise Agreement also requires Investor A to pay into a marketing fund for national and regional advertising programs directed by 911 Restoration, and allows 911 Restoration to direct local advertising efforts in Investor A's territory.
- 9. 911 Restoration did not provide an FDD to Investor A before entering into the Franchise Agreement. 911 Restoration also did not provide an FDD to Investor A in connection with the Rescission Offer.

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

### **CONCLUSIONS OF LAW**

- 1. 911 Restoration's offer and/or sale to Investor A through the Franchise Agreement constituted 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. 911 Restoration's Rescission Offer constituted a new 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).

3. 911 Restoration violated RCW 19.100.020 by offering and/or selling through the Franchise Agreement, because no registration for such offer and/or sale was on file with the Division at the time of the offer or sale.

- 4. 911 Restoration violated RCW 19.100.020 with the Rescission Offer, because no registration for such offer and/or sale was on file with the Division at the time of the offer and/or sale.
- 5. 911 Restoration violated RCW 19.100.080 because it did not provide Investor A with a copy of its thencurrent FDD at least fourteen calendar days prior to Investor A's execution of the Franchise Agreement.
- 6. 911 Restoration violated RCW 19.100.080 because it did not provide Investor A with a copy of its thencurrent FDD in connection with the Rescission Offer.
- 7. 911 Restoration violated RCW 19.100.170(1) because, as described in paragraph 4 of the Findings of Fact, it made an untrue statement of a material fact in the FDD included with its August 2009 application for franchise registration.

### **CONSENT ORDER**

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

IT IS AGREED AND ORDERED THAT Respondent 911 Restoration, and their agents 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 ("FIPA").

IT IS FURTHER AGREED AND ORDERED that Respondent 911 Restoration, and their agents and employees, shall each cease and desist from violating RCW 19.100.080, the disclosure document section of the FIPA.

IT IS FURTHER AGREED AND ORDERED that Respondent 911 Restoration, and their agents and employees, shall each cease and desist from violating RCW 19.100.170, the anti-fraud section of the FIPA.

IT IS FURTHER AGREED that prior to the entry of this Consent Order, Respondent 911 Restoration shall be liable for and shall pay the Division the costs and expenses incurred in investigation of this matter in the amount of \$1,000.

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

IT IS FURTHER AGREED that Respondent 911 Restoration enters into this Consent Order freely and voluntarily and with full understanding of its terms and significance.

IT IS FURTHER AGREED that in consideration of the foregoing, Respondent 911 Restoration waives their right to a hearing and to judicial review of this matter.

1	Signed this 18th day of February, 2015.		
2	Signed this four day of reordary, 2013.		
<ul><li>3</li><li>4</li><li>5</li></ul>	Signed by: 911 Restoration Franchise, Inc.		
6 7	By /s Idan Shpizear Chief Executive Officer		
8 9 10	Approved as to form by:  /s  Barry Kurtz, Attorney for Respondent State Bar of California #57544		
11 12 13	SIGNED and ENTERED this <u>25th</u>	day of <u>February</u>	, 2015.
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CONSENT ORDER