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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, Complainant, v. SUPERSHUTTLE LOS ANGELES, INC., Respondent.	FILE NO.: 993-5123 and 993-5067 CITATION INCLUDING: **(1) DESIST AND REFRAIN ORDER PURSUANT TO CORPORATIONS CODE SECTION 31406** **(2) CLAIM FOR ANCILLARY RELIEF AND COSTS PURSUANT TO CORPORATIONS CODE SECTION 31408**

Jan Lynn Owen, the Commissioner of Corporations of the State of California ("Commissioner"), of the Department of Corporations ("Department"), finds the following:

I. STATEMENT OF FACTS

1. SuperShuttle Los Angeles, Inc. ("SuperShuttle") has been registered with the Department to offer and sell franchises since at least 2004.

2. Under the SuperShuttle franchise agreements, which are typically ten years in length, franchisees operate a van shuttle service in the areas of Los Angeles International Airport, John Wayne International Airport, Ontario International Airport, and Long Beach Airport.

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3. Pursuant to Item 19 of the guidelines adopted by the North American Securities Administrators Association, Inc., known as the 2008 Franchise Registration and Disclosure Guidelines (the "NASAA Guidelines"), franchisors including SuperShuttle may disclose specified information concerning financial performance representations in the Uniform Franchise Disclosure Document ("UFDD Disclosure Document").

4. Financial performance representations are defined by the NASAA Guidelines as:

> "…any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or potential range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables."

5. Item 19 of the NASAA Guidelines, paragraph (3), provides in relevant part:

> "(3) If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure. The franchisor must also disclose the following:
>
> (i) Whether the representation is an historic financial performance representation about the franchise system's existing outlets, or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.
>
> (ii) If the representation relates to past performance of the franchise system's existing outlets, <u>the material bases for the representation</u>, including:
>
> (A) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (for example, geographic location, type of location (such as free standing vs. shopping center), degree of competition, length of time the outlets have operated, services or goods sold, services supplied by the franchisor, and whether the outlets are franchised or franchisor-owned or operated).
>
> (B) The dates when the reported level of financial performance was achieved.
>
> (C) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics.

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(D) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.

(E) Of those outlets whose data were used in arriving at the representation, the number and percent that actually attained or surpassed the stated results.

(F) Characteristics of the included outlets, such as those characteristics noted in Instruction (3)(ii)(A) of Item 19, that may differ materially from those of the outlet that may be offered to a prospective franchisee. "
[Emphasis added.]

6. From July 1, 2008 to April 20, 2012, SuperShuttle offered and sold approximately one hundred sixty five (165) franchises. During these offers and sales, SuperShuttle made financial performance representations in Item 19 of the UFDD Disclosure Document. The financial performance representations did not comply with the NASAA Guidelines. SuperShuttle's financial performance representations failed to include the material bases for the representations as required by paragraph (3) of the NASAA Guidelines, above. As a result, SuperShuttle omitted material information from the UFDD Disclosure Document in violation of Corporations Code sections 31122, 31200, and 31201.

7. In addition, SuperShuttle presented unclear information about shift length in Item 19 of the UFDD Disclosure Document. For example, SuperShuttle made its financial representations based on work shifts of "8 hours or more." It is unclear what is meant by "or more." Not only did the financial performance representations lack clarity, they also conflicted with each other. For instance, some SuperShuttle representations were based on 8-hour shifts, while other representations were based on shifts of 8 hours or more. Consequently, these unclear and inconsistent representations may make it difficult, to determine SuperShuttle's financial performance, because it is unclear what hours (e.g., 8, 16, 24 hours) must be used to confirm past revenues of van drivers. Therefore, SuperShuttle made unclear statements of material fact in violation of Corporations Code sections 31122, 31200, and 31201.

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II. VIOLATION OF CORPORATIONS CODE SECTION 31122

(Failure to File Accurate Registration Renewal Statement)

8. The Commissioner is responsible for administering and enforcing the California Franchise Investment Law, and registering the offer and sell of franchises in California, pursuant to Division 5 (commencing with section 31000) of Title 4 of the Corporations Code.

9. To register a franchise, a franchisor must file a UFDD Disclosure Document for review and approval, in accordance with Corporations Code sections 31111, 31114, and 31122; and Title 10, California Code of Regulations ("CCR"), sections 310.111, 310.114.1, and 310.122.

10. Title 10, CCR, section 310.111 requires franchisors to use the UFDD Disclosure Document on and after July 1, 2008. This UFDD Disclosure Document sets forth material information for prospective franchisees. This information provides each prospective franchisee with the information necessary to make an informed decision on whether to purchase the franchise. Corporations Code section 31001.

11. Title 10, CCR, section 310.111 requires franchisors to disclose information in the UFDD Disclosure Document pursuant to the NASAA guidelines,

12. Corporations Code section 31122 provides:

> "The registration renewal statement shall be in the form and content provided by the Commissioner, and shall be accompanied by a proposed offering prospectus."

13. Title 10, CCR, section 310.122 provides in relevant part:

> "Application for renewal of a registration pursuant to section 31122 of the Code shall be made upon the Uniform Franchise Registration Application, as defined in section 310.111(b)."

14. Section 310.111(b) requires the application to include information specified in the NASAA Guidelines. From July 1, 2008 to April 20, 2012, SuperShuttle's financial performance representations failed to include material bases for representations required by Item 19 of the NASAA Guidelines. Moreover, during this time, SuperShuttle presented unclear facts concerning eight-hour shifts in Item 19. SuperShuttle's registration renewal statement was not in the form and content required by Title 10, CCR, section 310.111(b); therefore, SuperShuttle violated

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Corporations Code section 31122 and Title 10, CCR, section 310.122.

III. VIOLATION OF CORPORATIONS CODE SECTION 31200

(Misrepresentations in Registration Renewal Statement)

15. Corporations Code section 31200 provides:

> "It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice or report filed with the commissioner under this law, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein, or fail to notify the commissioner of any material change as required by Section 31123."

16. From July 1, 2008 to April 20, 2012, SuperShuttle's financial performance representations failed to include material bases for representations required by Item 19 of the NASAA Guidelines, and made unclear statements concerning eight-hour shifts in Item 19. Accordingly, SuperShuttle presented unclear information in its registration renewal application, and the UFDD Disclosure Document, in violation of Corporations Code section 31200.

IV. VIOLATION OF CORPORATIONS CODE SECTION 31201

(Misrepresentations of Material Facts)

17. Corporations Code section 31201 provides:

> "It is unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication not enumerated in Section 31200 which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

18. From July 1, 2008 to April 20, 2012, Super Shuttle's financial performance representations failed to include material bases for the representation allowed by Item 19 of the NASAA Guidelines, and made unclear statements concerning eight-hour shifts in Item 19. Consequently, SuperShuttle made unclear statements, in violation of Corporations Code section 31201.

V. DESIST AND REFRAIN ORDER

19. Corporations Code section 31406 provides in relevant part:

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"(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars ($2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.
(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.
(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.
(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code."
(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order."

The Commissioner has cause to believe the following:

SuperShuttle's registration renewal statement was not in the form and content prescribed by Title 10, CCR, section 310.111(b), thereby violating Corporations Code section 31122 and Title 10, CCR, section 310.122.

SuperShuttle made unclear statements in its registration renewal statement, and the UFDD Disclosure Document, in violation of Corporations Code section 31200.

SuperShuttle offered and sold franchises by means of unclear statements concerning its financial performance representations in violation of Corporations Code section 31201.

20. Pursuant to Corporations Code section 31406:

SuperShuttle is hereby ordered to desist and refrain from filing registration renewal applications that do not conform to the form and content prescribed by rule of the Commissioner, in accordance with Corporations Code section 31122.

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SuperShuttle is hereby ordered to desist and refrain from filing registration renewal statements that result in untrue statements of material fact and omissions of material fact, in accordance with Corporations Code section 31200.

SuperShuttle is hereby ordered to desist and refrain from the further offer and sale of any and all franchises in the State of California by means of oral or written statements containing untrue statements of material fact and omissions of material fact, in accordance with Corporations Code section 31201.

VI. ANCILLARY RELIEF

21. Corporations Code section 31408 provides in relevant part:

> "(a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division, including a stop order, a claim for ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief. The person affected may be required to attend remedial education, as directed by the commissioner.
> (b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations."

22. Pursuant to Corporations Code section 31408, SuperShuttle shall pay disgorgement of one thousand five thousand dollars ($1,500) for each franchise purchased by any franchisee of SuperShuttle from July 1, 2008 to April 20, 2012.

23. The disgorgement shall be made payable and delivered to each franchisee no later than 60 days from the date of the order in this matter. SuperShuttle shall file a report with Timothy L. Le Bas, Senior Corporations Counsel on August 1, 2013 and December 31, 2013, to demonstrate compliance with this order. In paying the disgorgement, SuperShuttle shall not require the franchisee to waive any provision of the California Franchise Investment Law in accordance with Corporations Code section 31512.

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VII. ATTORNEY'S FEES

24. Pursuant to Corporations Code section 31408, Super Shuttle shall pay attorney's fees to the Department of Corporations in the amount of twenty-four thousand dollars ($24,000). This amount shall be made payable to the Department of Corporations and submitted to Timothy L. Le Bas, Senior Corporations Counsel, no later than 60 days from the date of the order.

Dated: May 9, 2013
Sacramento, CA

JAN LYNN OWEN
Commissioner of Corporations

By_____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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