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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of) FIL ORG ID: 85934
13)
14 THE COMMISSIONER OF BUSINESS) STIPULATION
OVERSIGHT,)
15)
Complainant,)
16)
v.)
17)
THE SENIOR’S CHOICE, INC.)
18)
Respondent.)
19)

20
21 IT IS HEREBY STIPULATED BY AND BETWEEN The Senior’s Choice, Inc. (hereinafter
22 “Senior’s”) and the Commissioner of Business Oversight (“Commissioner”), as follows:

23 RECITALS

24 A. The Senior’s Choice, Inc. (“Senior’s”) is a Nevada corporation, with a principal place of
25 business at 774 Mays Boulevard, Suite 10-297, Incline Village, Nevada 89451. Senior’s engages in
26 the business of offering and selling franchises to provide in-home companion care services to senior
27 citizens.

28 B. On April 6, 2007, a final Desist and Refrain Order was entered against Senior’s. This order

1 was issued by the California Corporations Commissioner (now the Commissioner of Business
2 Oversight), based on unregistered offers and sales of franchises.

3 C. On April 22, 2013, Senior's filed a registration renewal application with the Commissioner, to
4 offer and sell franchises in California. As part of the application Senior's submitted 2013 versions of
5 its Uniform Franchise Disclosure Document ("UFDD") and Membership Agreement. Both the UFDD
6 and Membership Agreement specify an initial franchise fee of forty-five thousand dollars
7 (\$45,000.00).

8 D. On August 19, 2013, Senior's provided 2012 versions of the UFDD and Membership
9 Agreement to CW, rather than giving CW the 2013 versions currently registered with the
10 Commissioner.

11 E. On September 3, 2013, CW signed the Senior's Membership Agreement and paid to Senior's
12 an initial franchise fee of twenty-five thousand dollars (\$25,000.00). Rather than charging a franchise
13 fee of forty-five thousand dollars (\$45,000.00) which reflected the 2013 terms registered with the
14 Commissioner, Senior's negotiated the price down. Thus, Senior's offer and sale of a franchise to
15 CW were on terms different from the terms of the offer registered with the Commissioner.

16 F. Accordingly, the Commissioner issued a Citation under the Franchise Investment Law to
17 prevent violations of law by Senior's.

18 The Commissioner finds that this action is appropriate in the public interest and consistent
19 with the purposes fairly intended by the policy and provisions of this law.

20 TERMS AND CONDITIONS

21 1. This Stipulation is entered into for the purpose of judicial economy and expediency, and to
22 avoid the expense of a hearing, and possible further court proceedings.

23 2. Senior's admits to the findings of the Department's Citation for violations of Corporations
24 Code sections 31110 and 31119 of the Franchise Investment Law, and the previous order, and hereby
25 stipulates to the issuance of the Citation, in the form attached as Exhibit A.

26 3. Senior's agrees to the finality of the Citation and agrees that the Citation shall remain in effect
27 and is public.

28 4. Senior's agrees to comply with all the provisions of the Citation. Failure to comply with any

1 provision of the Stipulation, including failure to meet deadlines, shall constitute a breach of the
2 Stipulation and be grounds for the Commissioner to issue a stop order denying the effectiveness of
3 the registration, and Senior's hereby waives that right to a hearing, and to any reconsideration, appeal,
4 or other rights which may be afforded pursuant to the Franchise Investment Law (Corp. Code,
5 §31000 et seq.), the California Administrative Procedure Act (Govt. Code, §11370 et seq.), the Code
6 of Civil Procedure (Code of Civ. Proc., §1, et seq.), or any other provision of law in connection with
7 these matters.

8 5. Senior's voluntarily waives its right to a hearing in relation to the Citation for violations of
9 Corporations Code sections 31110 and 31119 and the previous order. Further, Senior's waives its
10 right to any hearing, review, reconsideration, appeal, or other right which may be afforded under the
11 Franchise Investment Law, the Administrative Procedure Act, the Code of Civil Procedure, or any
12 other provision of law in connection with this matter.

13 6. Senior's enters this Stipulation voluntarily and without coercion and acknowledges that no
14 promises, threats, or assurances have been made by the Commissioner or any officer, or agent
15 thereof, about this Stipulation.

16 7. Senior's acknowledges that nothing in this Stipulation shall preclude the Commissioner, or the
17 Commissioner's agents or employees, to the extent authorized by law, from assisting or cooperating
18 in any investigation and/or action brought by any federal, state or county agency. Senior's also
19 agrees that this Stipulation shall not bind or otherwise prevent any federal, state or county agency
20 from the performance of its duties.

21 8. Senior's agrees that the delivery by certified mail of the executed Citation by the
22 Commissioner to Senior's current counsel, Steven Paganetti, shall constitute valid service of the
23 Citation.

24 9. Each of the parties represents, warrants, and agrees that they have received independent
25 advice from their attorney(s) and/or representatives with respect to the advisability of executing this
26 Stipulation.

27 10. Each of the parties represents, warrants, and agrees that in executing this Stipulation they have
28 relied solely on the statements set forth herein and the advice of their own attorney(s) and/or

1 representatives. Each of the parties represents, warrants, and agrees that in executing this Stipulation
2 they have placed no reliance on any statement, representation, or promise of any other party, or any
3 other person or entity not expressly set forth herein, or upon the failure of any party or any other
4 person or entity to make any statement, representation or disclosure of anything whatsoever. The
5 parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently
6 induced to execute this Stipulation; and (2) to preclude the introduction of parol evidence to vary,
7 interpret, supplement, or contradict the terms of this Stipulation.

8 11. This Stipulation is the final written expression and the complete and exclusive statement of all
9 agreements, conditions, promises, representations, and covenants between the parties with respect to
10 the subject matter hereof, and supersedes all prior or contemporaneous agreements, discussions,
11 negotiations, representations, and understandings between and among the parties, their respective
12 representatives, and any other person or entity, with respect to the subject matter covered hereby.

13 12. In that the parties have had the opportunity to draft, review and edit the language of this
14 Stipulation, no presumption for or against any party arising out of drafting all or any part of this
15 Stipulation will be applied in any action relating to, connected to, or involving this Stipulation.
16 Accordingly, providing that in cases of uncertainty, language of contract should be interpreted most
17 strongly against the party who causes the uncertainty to exist.

18 13. This Stipulation shall not become effective until signed and delivered by all parties.

19 14. This Stipulation may be executed in one or more separate counterparts, each of which when
20 so executed, shall be deemed an original but all of which, together, shall be deemed to constitute a
21 single document. This Stipulation may be executed by facsimile or scanned signature, and any such
22 facsimile or scanned signature by any party hereto shall be deemed to be an original signature and
23 shall be binding on such party to the same extent as if such facsimile or scanned signature were an
24 original signature.

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15. Each signator hereto covenants that he or she possess all necessary capacity and authority to sign and enter into this Stipulation.

Dated: April 22, 2016

Jan Lynn Owen
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: April 1, 2016

THE SENIOR'S CHOICE, INC.

By _____
Steven G. Everhart
Chief Executive Officer

APPROVED AS TO FORM:

Dated: April 20, 2016

By _____
Steven Paganetti
Attorney for
The Senior's Choice, Inc.