

1 MARY ANN SMITH  
Deputy Commissioner  
2 DOUGLAS M. GOODING  
Assistant Chief Counsel  
3 TIMOTHY L. Le BAS (State Bar No.: 135565)  
Senior Counsel  
4 Department of Business Oversight  
5 1515 K Street, Suite 200  
6 Sacramento, CA 95814  
7 Telephone (916) 322-2050  
Facsimile: (916) 445-6985  
8 Attorneys for Complainant

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 ) CITATION INCLUDING THE FOLLOWING:  
OVERSIGHT, )  
15 Complainant, ) 1. DESIST AND REFRAIN ORDER;  
16 v. ) 2. ADMINISTRATIVE PENALTY; AND  
17 THE SENIOR’S CHOICE, INC. ) 3. REMEDIAL EDUCATION  
18 Respondent. ) (CORPORATIONS CODE SECTIONS 31406  
19 ) AND 31408)  
20 )

21 Jan Lynn Owen, the Commissioner of Business Oversight of the State of California  
22 (“Commissioner”), finds the following:

23 I.

24 STATEMENT OF FACTS

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

1 2. On April 6, 2007, a final Desist and Refrain Order was entered against Senior's. This order  
2 was issued by the California Corporations Commissioner (now the Commissioner of Business  
3 Oversight), based on unregistered offers and sales of franchises.

4 3. On April 22, 2013, Senior's filed a registration renewal application with the Commissioner, to  
5 offer and sell franchises in California. As part of the application Senior's submitted 2013 versions of  
6 its Uniform Franchise Disclosure Document ("UFDD") and Membership Agreement. Both the UFDD  
7 and Membership Agreement specify an initial franchise fee of forty-five thousand dollars  
8 (\$45,000.00).

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

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

17 II.

18 CITATION WITH DESIST AND REFRAIN ORDER AND ADMINISTRATIVE PENALTY

19 Corporations Code section 31406 provides:

20 (a) If, upon inspection or investigation, based upon a complaint or otherwise, the  
21 commissioner has cause to believe that a person is violating any provision of this  
22 division or any rule or order promulgated pursuant to this division, the  
23 commissioner may issue a citation to that person in writing describing with  
24 particularity the basis of the citation. Each citation may contain an order to desist  
25 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.

26 (b) The sanctions authorized under this section shall be separate from, and in  
addition to, all other administrative, civil, or criminal remedies.

27 (c) If within 60 days from the receipt of the citation, the person cited fails to  
28 notify the commissioner that the person intends to request a hearing as described  
in subdivision (d), the citation shall be deemed final.

1 (d) Any hearing under this section shall be conducted in accordance with Chapter  
 2 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
 Government Code.

3 (e) After the exhaustion of the review procedures provided for in this section, the  
 4 commissioner may apply to the appropriate superior court for a judgment in the  
 5 amount of the administrative penalty and order compelling the cited person to  
 6 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.

7 A. Violation One: Failure to Provide Current Franchise Disclosure Document

8 Corporations Code section 31119 provides it is unlawful to sell any franchise in this state that  
 9 is subject to registration under this law without first providing to the prospective franchisee, at least  
 10 14 days prior to the execution by the prospective franchisee of any binding franchise or other  
 11 agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy  
 12 of the franchise disclosure document, together with a copy of the proposed agreements relating to the  
 13 sale of the franchise. Here, Senior’s provided stale (2012 versions) of the UFDD and Membership  
 14 Agreement to CW, rather than the most current (2013 versions) that were currently registered with  
 15 the Commissioner. Therefore, the Commissioner has cause to believe that Senior’s violated  
 16 Corporations Code section 31119. Pursuant to Corporations Code section 31406, Senior’s is hereby  
 17 ordered to desist and refrain from offering and selling franchises in violation of section 31119.

18 B. Violation Two: Sale of Unregistered, Non-Exempt Franchise

19 Corporations Code section 31110 provides it is unlawful for any person to offer and sell any  
 20 franchise in this state unless the offer of the franchise has been registered or is exempt from  
 21 registration. Here, Senior’s offered and sold a franchise to CW on terms different from those  
 22 registered with the Commissioner, when it reduced its initial franchise fee for CW (from \$45,000.00  
 23 to \$25,000.00). Therefore, the Commissioner has cause to believe that Senior’s violated Corporations  
 24 Code section 31110. Pursuant to Corporations Code section 31406, Senior’s is hereby ordered to  
 25 desist and refrain from offering and selling franchises in violation of section 31110.

26 C. Violation Three: Violation of Previous Desist and Refrain Order

27 Corporations Code section 31406 provides that the Commissioner may include a desist and  
 28 refrain order for a violation of any order. In 2007, Senior’s was subject to a desist and refrain order

1 prohibiting unregistered offers and sales of franchises. Here, Senior’s offered and sold an  
2 unregistered franchise to CW in violation of Corporations Code section 31110. Therefore, the  
3 Commissioner has cause to believe that Senior’s violated the 2007 desist and refrain order. Pursuant  
4 to Corporations Codes section 31406, Senior’s is hereby ordered to desist and refrain from offering  
5 and selling franchises in violation of that previous order.

6 In addition, Senior’s is hereby assessed and ordered to pay an administrative penalty of seven  
7 thousand five hundred dollars (\$7,500.00) based on the three separate violations described above. The  
8 administrative penalty shall be made payable by check to the Department of Business Oversight and  
9 submitted no later than thirty (30) days from the date this order is final to: Timothy L. Le Bas, Senior  
10 Counsel, Enforcement Division, 1515 K Street, Suite 200, Sacramento, CA 95814.

11 III.

12 REMEDIAL EDUCATION

13 Subdivision (a) of Corporations Code section 31408 provides that if the Commissioner  
14 determines it is in the public interest, the Commissioner may include, in an administrative action, a  
15 requirement that the franchisor attend remedial education. Accordingly, Senior’s is ordered to  
16 provide training to its directors, officers, and managers in the area of franchise compliance matters  
17 including, but not limited to, registration and disclosure. Proof of completion of that training shall be  
18 submitted no later than sixty (60) days from the date this order is final, by submitting that proof of  
19 completion to: Timothy L. Le Bas, Senior Counsel, Enforcement Division, 1515 K Street,  
20 Sacramento, CA 95814.

21 Dated: April 22, 2016  
22 Sacramento, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

23  
24  
25 By \_\_\_\_\_  
26 MARY ANN SMITH  
27 Deputy Commissioner  
28 Enforcement Division