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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. GARLIC JIM'S FRANCHISE INTERNATIONAL, INC. and DWAYNE NORTHROP, Respondents.	OAH Case No.: 2011030530 AMENDED STATEMENT IN SUPPORT OF: 1) CITATIONS 2) DESIST AND REFRAIN ORDER 3) CLAIMS FOR ANCILLARY RELIEF

I

INTRODUCTION

The California Department of Corporations ("Department") is responsible for administering and enforcing provisions of the California Franchise Investment Law ("FIL"), which is found at Corporations Code sections 31000 et seq. The Department is authorized to pursue administrative actions and remedies against franchisors that violate the FIL in California.

The California Corporations Commissioner ("Commissioner") finds that Respondents Garlic

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Jim's Franchise International, Inc., formerly Garlic Jim's Franchise Corp., both Washington corporations (collectively "Garlic Jim's"), and Dwayne Northrop ("Northrop"), in his capacity as president of Garlic Jim's, have violated multiple provisions of the FIL.

II

FACTS

Garlic Jim's is a Washington corporation engaged in business activities relating to the franchising of restaurants under the trade name "Garlic Jim's Famous Gourmet Pizza." Garlic Jim's offers and sells franchises in California as well as other states. Garlic Jim's principal business address is 802 134th St. SW, Suite 130, Everett, Washington 98204. Northrop was president of Garlic Jim's at all relevant times.

Beginning on August 22, 2005, the Commissioner approved the first of Garlic Jim's franchise registration applications, permitting Garlic Jim's to offer and sell franchises in California. Franchise registrations must be renewed or re-registered annually in order for the franchisor to continue to offer and sell franchises in California. The annual filings allow the Commissioner to review the financial condition and other aspects of the franchisor and franchise offering. Garlic Jim's obtained two subsequent franchise registrations, on May 22, 2006 and on April 24, 2007. This last registration expired on April 20, 2008. The Commissioner approved each of Garlic Jim's three registrations with a condition to the effectiveness of the registration ("Deferral Fee Condition"). Each registration was only effective if this condition was met.

The Commissioner imposed the Deferral Fee Condition on Garlic Jim's to protect potential California franchisees. The Deferral Fee Condition required Garlic Jim's to complete all of its initial obligations related to each franchise prior to receiving the initial franchise fee for that franchise. These obligations included completing initial training, conducting site inspection, and paying for professional fees and certain costs associated with opening each Garlic Jim's restaurant. Dwayne Northrop, President of Garlic Jim's, declared in a written and signed affidavit submitted to the Department that he read and understood the Deferral Fee Condition.

Beginning in February 2006 and continuing until at least April 2008, Garlic Jim's sold at least twenty-five (25) franchises to California investors. During this period, Garlic Jim's accepted the

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initial franchise fees prior to completing all of its initial obligations, such as training and site inspection, under each franchise agreement. In doing so, Garlic Jim's and Dwayne Northrop violated the Deferral Fee Condition.

III

VIOLATIONS OF CALIFORNIA FRANCHISE INVESTMENT LAW

The Commissioner finds that Respondents Garlic Jim's and Dwayne Northrop have committed multiple violations of the California Franchise Investment Law, including, but not limited to, the following:

A. MATERIAL MISSTATEMENTS OR OMISSIONS IN A FRANCHISE REGISTRATION APPLICATION FILED WITH THE COMMISSIONER IN VIOLATION OF SECTION 31200

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.

At various times from August 22, 2005 through April 20, 2008, the Commissioner issued three franchise registrations to Garlic Jim's under section 31110 of the Franchise Investment Law, authorizing Garlic Jim's to offer and sell franchises in California. The Commissioner approved each of Garlic Jim's three registrations only on the condition that all initial obligations to its franchisees were completed prior to Garlic Jim's collecting the initial franchise fees associated with the sale of each franchise location. Garlic Jim's agreed to comply with this condition to the effectiveness of registration under the FIL. Garlic Jim's willfully made this untrue statement to the Department repeatedly. Even after acknowledging the condition and declaring that it would comply with it, Garlic Jim's accepted initial franchise fees for at least twenty-five (25) franchise locations without completing its initial obligations for each franchise.

As such, Garlic Jim's and Dwayne Northrop violated the Deferral Fee Condition to its registration to offer and sell franchises in California. Further, the Deferral Fee Condition was a material condition to the effectiveness of all three registrations. Accordingly, Respondents violated

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section 31200 three times by making the untrue statement that they would comply with the Deferral Fee Condition in each of their three applications for registration.

B. MATERIAL MISSTATEMENTS OR OMISSIONS OF MATERIAL FACT IN THE OFFER OR SALE OF FRANCHISES IN VIOLATION OF SECTION 31201

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 light of the circumstances under which they were made, not misleading.

As stated above, Garlic Jim's obtained at least twenty-five (25) signed franchise agreements from California residents throughout 2006, 2007, and 2008, and accepted the initial franchise fees for each one prior to fulfilling its obligations. Consequently, Garlic Jim's and Dwayne Northrop either omitted the material fact of the Commissioner's Deferral Fee Condition when offering and selling to these prospective franchisees or made the untrue statement of a material fact that the Commissioner's Deferral Fee Condition was no longer in effect. As such, Respondents committed at least twenty-five (25) violations of section 31201.

C. VIOLATION OF COMMISSIONER'S CONDITION OF REGISTRATION PURSUANT TO SECTION 31203

Corporations Code section 31203 provides:

> It is unlawful for any person to violate any order of the commissioner or condition to the effectiveness of the registration of the offer or sale of franchises.

As stated above, the Commissioner approved three of Garlic Jim's registrations to sell franchises at various times between August 22, 2005 and April 20, 2008. The Commissioner required Garlic Jim's and Dwayne Northrop to comply with the Deferral Fee Condition as a condition to the effectiveness of those registrations. The Deferral Fee Condition required Garlic Jim's to provide initial training, site inspection, and professional fees and its costs associated with opening each Garlic Jim's restaurant prior to collecting the initial fee for each franchise. Garlic Jim's accepted the initial franchise fees for at least twenty-five (25) franchises prior to completing all of its obligations at each franchise location. As such, Garlic Jim's and Dwayne Northrop violated section 31203 at least

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twenty-five (25) times between August 2005 and April 2008.

D. MISREPESENTATION WITH INTENT TO INFLUENCE THE COMMISSIONER'S ADMINSTRATION OF THE FRANCHISE INVSTMENT LAW IN VIOLATION OF SECTION 31204

Corporations Code section 31204, subsection (b) provides:

> It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

As stated above, Garlic Jim's and Dwayne Northrop violated the Deferral Fee Condition by accepting initial franchise fees for at least twenty-five (25) franchises prior to completing all of their obligations for each location. In addition to the Deferral Fee Condition, the Commissioner required Garlic Jim's President, Dwayne Northrop, to sign an affidavit stating that he had read and understood the Deferral Fee Condition. Respondents acknowledged the Deferral Fee Condition and signed the affidavit in order to secure each of the above-mentioned franchise registrations, with knowledge of their practice of regularly accepting initial franchise fees in violation of the condition, and with intent to influence the Commissioner's decision with respect to all three registrations. As such, Respondents violated section 31204(b) three times between August 2005 and April 2008.

IV

CITATIONS

Corporations Code section 31406 provides:

> (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 ($2,500.00) 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.

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(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part I 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 foregoing facts establish that Garlic Jim's and Dwayne Northrop have committed multiple violations of the Franchise Investment Law in the course of conducting business with no less than twenty-five (25) California franchises since the initial franchise registration in August 2005.

Pursuant to section 31406, Garlic Jim's and Dwayne Northrop are hereby assessed and ordered to pay the Commissioner citations of $2,500 for each of three (3) violations of section 31200, twenty-five (25) violations of section 31201, twenty-five (25) violations of section 31203, and three (3) violations of 31204. The total citation amount for the fifty-six (56) violations is one hundred and forty thousand dollars ($140,000), with all payments being due and payable to the Department within ninety (90) days after this order becomes final.

V

DESIST AND REFRAIN ORDER

The Commissioner finds that beginning as early as February 2006, Garlic Jim's and Dwayne Northrop violated multiple provisions of the Franchise Investment Law, including but not limited to Corporations Code sections 31200, 31201, 31203, and 31204 as set forth in greater detail herein.

Pursuant to section 31406 of the Corporations Code, Garlic Jim's and Dwayne Northrop are hereby ordered to desist and refrain from:

(a) Making material misstatements or omissions in a franchise registration application filed with the Commissioner in violation of section 31200;

(b) Making material misstatements or omissions by any oral or written communication in the course of offering or selling franchises in violation of section 31201;

(c) Violating any order of the commissioner or condition to the effectiveness of the registration of the offer or sale of franchises in violation of section 31203; and

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(d) Knowingly making untrue statements to the commissioner during the course of licensing, investigation, or examination, with the intent to influence the administration or enforcement of the Franchise Investment Law in violation of section 31204.

VI

CLAIMS FOR ANCILLARY RELIEF

Corporations Code section 31408(a) provides:

> 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.

CLAIM FOR RESCISSION

The Commissioner has found that Garlic Jim's and Dwayne Northrop have committed multiple violations of the Franchise Investment Law. As a result, Garlic Jim's and Dwayne Northrop shall afford all franchisees who were located in California at the time Garlic Jim's offered or sold franchise(s) to them, and franchisees who purchased the right to open franchised locations in California, (collectively, "California Franchisees") the right to rescind or terminate without penalty any franchise agreement or related contractual obligation with Garlic Jim's.

CLAIM FOR RESTITUTION AND DAMAGES

In light of the nature and length of Garlic Jim's and Dwayne Northrop's violations of the FIL, Garlic Jim's and Dwayne Northrop shall:

(a) Pay restitution to every California Franchisee in the amount of the full franchise fee collected from each California Franchisee within ninety (90) days after this order becomes final; and

(b) Pay twenty thousand dollars ($20,000) in damages, or according to proof, to each California Franchisee, whether or not such franchisee opened a franchise and whether or not such franchise is still open.

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OTHER RELIEF

Perform all obligations promised to franchisees at each currently open franchised location in California.

CLAIM FOR COMPLAINANT'S COSTS

Corporations Code section 31408(b) provides:

> 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.

Garlic Jim's and Dwayne Northrop shall pay reasonable attorney's fees and investigative expenses incurred by the Department of Corporations in investigating and enforcing the FIL in this matter, in the discretion of the administrative law judge or in the amount of twenty-five thousand dollars ($25,000).

VII

CONCLUSION

Based upon the foregoing findings, the California Corporations Commissioner has found that Garlic Jim's and Dwayne Northrop violated multiple provisions of the California Franchise Investment Law and has issued this Desist and Refrain Order, Citations, and Claims for Ancillary Relief.

WHEREFORE, the California Corporations Commissioner finds the foregoing orders and claims necessary, in the public interest, for the protection of investors, and consistent with the purposes, policies, and provisions of the California Franchise Investment Law.

Dated: December 6, 2011
Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____
ALAN S. WEINGER
Deputy Commissioner