

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 TIMOTHY L. Le BAS (State Bar No.: 135565)
4 Senior Corporations Counsel
Department of Business Oversight
5 1515 K Street, Suite 200
6 Sacramento, CA 95814
Telephone (916) 322-2050
7 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.: 84603
13)
14 THE COMMISSIONER) CITATION INCLUDING THE FOLLOWING:
OF BUSINESS OVERSIGHT OF)
15 THE STATE OF CALIFORNIA,) 1. DESIST AND REFRAIN ORDER;
16)
Complainant,) 2. ADMINISTRATIVE PENALTY;
17)
v.) 3. APPOINTMENT OF MONITOR;
18)
JEWELRY REPAIR ENTERPRISES, INC.,) 4. REMEDIAL EDUCATION; AND
19)
Respondent.) 5. ATTORNEY’S FEES
20)
(CORPORATIONS CODE SECTIONS 31406
21)
AND 31408)
22)

23
24 Jan Lynn Owen, the Commissioner of Business Oversight of the State of California
25 (“Commissioner”), finds the following:

26 I.
27 STATEMENT OF FACTS

28 1. Jewelry Repair Enterprises, Inc. (“JRE”) is a Pennsylvania corporation, incorporated on

1 October 14, 1986 with a principal place of business at 1515 S. Federal Highway Suite 412, Boca
2 Raton, FL 33432. JRE engages in the business of offering and selling franchises under the names of
3 “Fast-Fix Jewelry Repairs” and “Fast-Fix Jewelry and Watch Repairs.”

4 2. On April 1, 2014, JRE filed a registration renewal application to offer and sell franchises in
5 California. This application has not yet become effective, and is pending with the Department of
6 Business Oversight (“Department”). The application contains a Uniform Franchise Disclosure
7 Document (“UFDD”). The Uniform Disclosure Document describes Yvette Rivera as the Director of
8 Franchise Relations, and explains that she has held this position since August 18, 2003. Yvette
9 Rivera is no longer employed by JRE.

10 3. The franchise renewal application filed by JRE also includes an affidavit of Yvette Rivera
11 Soulen indicating, in relevant part, under penalty of perjury, the following: Ms. Rivera Soulen has
12 been the Director of Franchise Relations of Franchisor JRE since October 18, 2005. JRE hired Roger
13 Casey as JRE’s Controller in June 2013. JRE asserts that during the three month period of his tenure,
14 from June to September 2013, Mr. Casey, on his own authority and in an effort to clean out old and
15 unnecessary documentation, shredded and destroyed JRE’s archived files, which contained numerous
16 franchisee and store-related documents. In doing so, Mr. Casey destroyed a number of franchisee files
17 which contained original UFDD receipts and other pertinent documentation that are not stored
18 electronically. These files are where JRE retained its franchisee compliance documentation for long-
19 term archive, and these records would have included UFDD receipt pages signed by California
20 franchisees during the 2009-2011 time period. JRE asserts that Mr. Casey was neither directed nor
21 authorized by JRE Executive Management to destroy these files.

22 4. On May 29, 2015, JRE submitted a declaration of Russell L. Cooper. Attached to his
23 declaration is a spreadsheet showing records that are missing from franchise files. The spreadsheet
24 reflected files of 178 franchises. Of these, approximately 32 files involve California franchisees and
25 16 of the 32 California files are missing Item 23 Receipts. In his declaration, Mr. Cooper states that
26 certain documents within specific franchise folders are noted as “missing” either from being
27 misplaced during JRE’s consolidation under its new parent company or from inadequate record
28 keeping practices prior to October 31, 2012. Mr. Cooper also notes in his declaration that 14 of the

1 16 California franchise files that are missing Item 23 Receipts are from franchise sales that occurred
2 prior to October 31, 2012, the date that JRE's stock was acquired by its current ownership.

3 5. Without the books and records which are missing, there is a lack of assurance (through Item
4 23 Receipts) that California franchisees received a UFDD from JRE.

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

7 **II.**

8 **CITATION WITH DESIST AND REFRAIN ORDER AND ADMINISTRATIVE PENALTY**

9 Corporations Code section 31406 provides:

10 (a) If, upon inspection or investigation, based upon a complaint or otherwise, the
11 commissioner has cause to believe that a person is violating any provision of this
12 division or any rule or order promulgated pursuant to this division, the
13 commissioner may issue a citation to that person in writing describing with
14 particularity the basis of the citation. Each citation may contain an order to desist
15 and refrain and an assessment of an administrative penalty not to exceed two
16 thousand five hundred dollars (\$2,500) per violation and shall contain reference to
17 this section, including the provisions of subdivision (c). All penalties collected
18 under this section shall be deposited in the State Corporations Fund.

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

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

24 (d) Any hearing under this section shall be conducted in accordance with Chapter
25 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
26 Government Code.

27 (e) After the exhaustion of the review procedures provided for in this section, the
28 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.

Corporations Code section 31150 provides that every franchisor offering franchises for sale in
California shall at all times keep and maintain a complete set of books, records and accounts of such
sales. Based on the foregoing involving missing Item 23 Receipts, the Commissioner has cause to
believe that JRE failed to maintain its franchise books, records and accounts of its sales thereby

1 violating Corporations Code section 31150. Pursuant to Corporations Code section 31406, JRE is
2 hereby ordered to desist and refrain from failing to keep its franchise books, records and accounts in
3 violation of section 31150. In addition, JRE is hereby assessed and ordered to pay an administrative
4 penalty of thirty-two thousand dollars (\$32,000.00) based on the 16 separate violations of section
5 31150 which involve missing Item 23 Receipts for 16 California franchisees. The administrative
6 penalty shall be made payable by check to the Department of Business Oversight and submitted no
7 later than thirty (30) days from the date this order is final to: Timothy L. Le Bas, Senior Counsel,
8 Enforcement Division, 1515 K Street, Suite 200, Sacramento, CA 95814.

9 **III.**

10 **APPOINTMENT OF MONITOR**

11 Corporations Code section 31408 provides:

12 (a) If the commissioner determines it is in the public interest, the commissioner
13 may include in any administrative action brought under this division, including a
14 stop order, a claim for ancillary relief, including, but not limited to, a claim for
15 rescission, restitution or disgorgement or damages on behalf of the persons
16 injured by the act or practice constituting the subject matter of the action, and the
17 administrative law judge shall have jurisdiction to award additional relief. The
18 person affected may be required to attend remedial education, as directed by the
19 commissioner.

20 (b) In an administrative action brought under this part the commissioner is entitled
21 to recover costs, which in the discretion of the administrative law judge may
22 include any amount representing reasonable attorney's fees and investigative
23 expenses for the services rendered, for deposit into the State Corporations Fund
24 for the use of the Department of Corporations.

25 Under section 31408, the Commissioner may request additional ancillary relief as part of any
26 administrative action. On or before October 1, 2015, JRE is hereby ordered to contract with an
27 independent monitor who shall have no familial, financial, or professional affiliation with JRE or any
28 of its employees or agents; and JRE shall provide the name and contact information of the monitor to
the Department by that date. The Monitor shall be a licensed attorney with experience in franchise
transactions in California. The monitor shall be responsible for assisting JRE to develop and
implement policies and procedures governing books, records and accounts of its franchise sales. On
or before December 1, 2015, the monitor shall submit a report on JRE's development and

1 implementation of these policies and procedures. The report shall be submitted to: Timothy L. Le
2 Bas, Senior Counsel, Enforcement Division, 1515 K Street, Suite 200, Sacramento, CA 95814.

3 **IV.**

4 **REMEDIAL EDUCATION AND ATTORNEY’S FEES**

5 Subdivision (a) of Corporations Code section 31408 provides that if the Commissioner
6 determines it is in the public interest, the Commissioner may include, in an administrative action, a
7 requirement that the franchisor attend remedial education. Section 31408 also provides that the
8 Commissioner is entitled to costs including reasonable attorney’s fees. Accordingly, JRE is ordered to
9 provide training to its directors, officers, and managers in the area of franchise compliance matters
10 including, but not limited to, maintenance of books, records and accounts of franchise sales. Proof of
11 completion of that training shall be submitted no later than sixty (60) days from the date this order is
12 final, by submitting that proof of completion to: Timothy L. Le Bas, Senior Counsel, Enforcement
13 Division, 1515 K Street, Sacramento, CA 95814.

14 Additionally, pursuant to subdivision (b) of Corporations Code section 31408, JRE is hereby
15 ordered to pay attorney’s fees to the Department in the amount of eight thousand dollars (\$8,000.00).
16 The attorney’s fees shall be made payable by check to the Department of Business Oversight and
17 submitted no later than thirty (30) days from the date this order is final to: Timothy L. Le Bas, Senior
18 Counsel, 1515 K Street, Suite 200, Sacramento, CA 95814.

19 Dated: September 8, 2015
20 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

21
22
23 By _____
24 MARY ANN SMITH
25 Deputy Commissioner
26 Enforcement Division
27
28