

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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Deputy Commissioner
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE CALIFORNIA) File No.: 993-5353/266725
12 CORPORATIONS COMMISSIONER,)
13) **AMENDED DESIST AND REFRAIN**
14 Complainant,) **ORDER; AND CITATIONS**
15 vs.) (CORPORATIONS CODE SECTIONS 31406)
16 PRS FRANCHISE SYSTEMS, LLC; DANIEL)
17 S. FRAGEN; IRA T. DISTENFIELD,)
18 Respondents.)

19 TO: PRS FRANCHISE SYSTEMS, LLC
20 DANIEL S. FRAGEN
21 14045 Ballantyne Corporate Place, Suite 525
Charlotte, NC 28277

22 IRA T. DISTENFIELD
23 3609 State Street
24 Santa Barbara, CA 93105

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1 The California Corporations Commissioner (“Commissioner”) finds that:

2 I.

3 FACTS

4 1. At all relevant times, PRS Franchise Systems, LLC (“PRS”) is and was a North
5 Carolina corporation incorporated on March 19, 2002 engaged in business activities providing a
6 variety of marketing services including specialty advertising, sales brochures, letterhead, business
7 cards, direct mail, annual reports, website development and similar services and products. PRS’
8 principal place of business is 14045 Ballantyne Corporate Place, Suite 525, Charlotte, NC 28277.

9 2. At all relevant times, Daniel S. Fragen (“Fragen”) is and was the chief executive
10 officer of PRS.

11 3. At all relevant times, Ira T. Distenfield (“Distenfield”) is and was a franchise sales
12 broker of PRS. Distenfield also owned and operated a PRS franchise at 3609 State Street, Santa
13 Barbara, California.

14 4. On May 26, 2005, the Commissioner issued a franchise permit to PRS. That permit
15 was renewed on January 20, 2006 and expired on January 20, 2007. PRS subsequently filed an initial
16 Uniform Franchise Registration Application with the California Department of Corporations
17 (“Department”), on March 6, 2007, seeking to register its franchise enterprise in this state in
18 compliance with California Corporations Code section 31111 (“Application”). The Application
19 submitted to the Commissioner was accompanied by a Franchise Disclosure Document (“FDD”)
20 containing the material information set forth in the Application, as required by section 31114 of the
21 California Corporations Code. On March 20, 2007, the Order Accelerating Effectiveness of
22 Registration was issued to PRS, terminating on January 20, 2008. There has been no effective
23 registration since its expiration.

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1 II.

2 CALIFORNIA FRANCHISE INVESTMENT LAW VIOLATIONS

3 A. MATERIAL MISSTATEMENTS OR OMISSIONS IN A FRANCHISE

4 REGISTRATION APPLICATION FILED WITH THE COMMISSIONER IN VIOLATION OF
5 SECTION 31200

6 5. California Corporations Code section 31200 provides:

7 It is unlawful for any person willfully to make any untrue statement of a material fact in any
8 application, notice or report filed with the commissioner under this law, or willfully to omit to
9 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.

10 6. Item 19 of the FDD disclosed that PRS was not providing any financial performance
11 representations (“earnings claims”). However, during the Department’s review process, it found that
12 PRS was representing unauthorized earnings claims to prospective franchisees. The Department,
13 therefore, requested in writing that PRS stop using unauthorized earnings claims. These statements
14 include, but are not limited to the following:

15 a. On or about July 2006, Distenfield provided a franchisee, from Washington
16 State, with revenue reports for the first months of operation of his PR store in Santa Barbara.
17 According to these reports, during the first month of operation (which started about mid-
18 January 2006), the Santa Barbara franchise achieved gross monthly sales of approximately
19 \$75,000 and the subsequent months through May showed similar results. Distenfield
20 informed the prospective franchisee that the Washington State store should generate the same
21 amount.

22 b. On or about October 2006, Distenfield provided a franchisee from Tucson,
23 Arizona, with the January through November 2006 unaudited financial information pertaining
24 to his Santa Barbara franchise. Distenfield claimed gross sales in March were \$80,000 and
25 currently \$100,000 a month for the last three months with a year to date net profit of over
26 \$300,000.

27 c. On February 25, 2007, Fragen, through e-mail, addressed to a franchisee,
28 provided unauthorized earnings claims in stating that new PRS stores “have ranged from a

1 couple thousand dollars during the first month to around \$60k the first month. \$10 - \$12k is
2 pretty typical.” In the same e-mail Fragen also stated “we would expect that you should
3 average between 10-20k per month the next 90 and over \$30k per month the balance of the
4 year.”

5 d. A franchisee was told that he would generate between \$40,000 - \$50,000 in
6 monthly revenue within 6 months of opening his store. The franchisee was shown un-audited
7 financials from Distenfield’s Santa Barbara, California PRS store but was not shown a
8 composite of all open store financials.

9 e. PRS told a franchisee “a retail store” would achieve cash flow in four months
10 from opening and would generate \$50,000 in monthly revenue by the sixth month.

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12 B. MATERIAL MISSTATEMENTS OR OMISSIONS IN VIOLATION OF SECTION
13 31201

14 7. California Corporations Code section 31201 provides:

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

19 8. PRS offered and sold at least one PRS franchise in the state of California on June 6,
20 2007. PRS franchise PRS misrepresented and/or omitted to inform the franchisee of the numerous
21 legal actions filed against Distenfield and/or his company, We The People, including but not limited
22 to: Lubetzky, Richard v. Distenfield, Ira T., et al (Los Angeles/Central, BC 343800); Vihom, Charles
23 F. v. We The People USA, Inc, Distenfield, Ira (Cook County, Illinois – 5th Municipal District, 05M5
24 0001733); Nash, Earl v. Distenfield, Ira et al. (Santa Barbara County Superior Court, 1038274); and
25 Tunney, Robert J. v. Distenfield, Ira et al. (Santa Barbara County Superior Court, 1035341).

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III.

DESIST AND REFRAIN ORDER;

CITATIONS

9. California 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) 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.

NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING THEREFORE, the California Corporations Commissioner is of the opinion that PRS FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T. DISTENFIELD made an untrue statement or willfully omitted to state a material fact in an application, notice or report filed with the Commissioner, in violation of section 31200 of the Franchise Investment Law. Pursuant to California Corporations Code section 31406, PRS FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T. DISTENFIELD are ordered to desist and refrain from making any untrue statement of a material fact in any application, notice or report filed with the Commissioner or willfully omit to state in any such

1 application, notice or report any material fact which is required to be stated therein or fail to notify
2 the Commissioner of any material change as required by California Corporations Code section
3 31123, including but not limited to making unauthorized earnings claims unless and until approved
4 by the California Corporations Commissioner.

5 Moreover, the California Corporations Commissioner is of the opinion that at least one
6 franchise was offered or sold in this state by means of written or oral communication which includes
7 an untrue statement of a material fact or omits to state a material fact necessary in order to make the
8 statements made, in the light of the circumstances under which they were made, not misleading, in
9 violation of section 31201 of the Franchise Investment Law. Pursuant to California Corporations
10 Code sections 31406, PRS FRANCHISE SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA T.
11 DISTENFIELD are hereby ordered to desist and refrain from offering or selling a franchise in this
12 state which includes an untrue statement of a material fact or omits to state a material fact necessary
13 in order to make the statements made, in the light of the circumstances under which they were made,
14 not misleading, including but not limited to the misrepresentation and/or omission of the numerous
15 legal actions against IRA T DISTENFIELD.

16 Furthermore, pursuant to California Corporations Code section 31406, PRS FRANCHISE
17 SYSTEMS, LLC; DANIEL S. FRAGEN; and IRA DISTENFIELD are hereby ordered to pay to the
18 Commissioner an administrative penalty in the amount of \$ 15,000, representing the maximum
19 penalty of \$2,500 multiplied by five statements concerning earnings claims in violation of section
20 31200, and a violation of section 31201.

21 This Order and Citations are necessary, in the public interest, for the protection of franchisees
22 and consistent with the purposes, policies, and provisions of the Franchise Investment Law.

23 Dated: September 2, 2009
24 Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

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26 By: _____
27 ALAN S. WEINGER
28 Deputy Commissioner
Enforcement Division