

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
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4 Senior Corporations Counsel
Department of Corporations
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8 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA

13 In the Matter of THE CALIFORNIA)
CORPORATIONS COMMISSIONER,)

14 Complainant,)

15 vs.)

16)
17 PLAY N TRADE FRANCHISE, INC.,)

18 Respondent.)

OAH Case No.: 2009050889

) STIPULATION AND AGREEMENT OF
) PLAY N TRADE FRANCHISE, INC.
) TO:

) (1) DESIST AND REFRAIN FROM
) VIOLATION OF THE CALIFORNIA
) FRANCHISE INVESTMENT LAW

) (2) CONSENT TO ISSUANCE OF ORDER
) REVOKING EFFECTIVENESS OF UNIT
) FRANCHISE REGISTRATION

) (3) CONSENT TO ISSUANCE OF ORDER
) DENYING EFFECTIVENESS OF AREA
) DEVELOPER FRANCHISE RENEWAL
) APPLICATION

) (4) PAY CITATIONS, ATTORNEYS' FEES
) AND COSTS TO COMMISSIONER

) (5) MAKE PAYMENTS AND PROVIDE
) OTHER ANCILLARY RELIEF TO
) FRANCHISEES, AS SPECIFIED HEREIN

1 IT IS HEREBY STIPULATED BY AND AGREED BETWEEN RESPONDENT PLAY N
2 TRADE FRANCHISE, INC. (“PLAY N TRADE”) AND PRESTON DUFAUCHARD,
3 COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA
4 (“COMMISSIONER”), AS FOLLOWS:
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6 **RECITALS**

7 A. At all relevant times, Play N Trade was a Nevada corporation engaged in business
8 activities relating to the franchising of Play N Trade retail outlets offering new and used electronic
9 video games and consoles for consumer purchase. Play N Trade’s principal business address is 131
10 Calle Iglesia, Suite 200, San Clemente, California 92672;
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12 B. Play N Trade’s parent company, San Clemente Capital, LLC, and its sole managing
13 member, CAAZ, LLC, are both Arizona limited liability companies also doing business at the same
14 address;
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16 C. Play N Trade maintained two registrations to offer and sell franchises in California,
17 each of which were registered by the Commissioner pursuant to the Franchise Investment Law of the
18 State of California (California Corporations Code §§ 31100 *et seq.*). At all relevant times, Play N
19 Trade conducted its franchising operations from its principal place of business in California;
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21 D. On April 14, 2009, the Commissioner issued against Play N Trade: (1) Statement in
22 Support of Stop Order Revoking Effectiveness of Unit Franchise Registration and Order Revoking
23 Effectiveness of Unit Franchise Registration; (2) Statement in Support of Stop Order Denying
24 Effectiveness of Area Developer Franchise Registration and Order Denying Effectiveness of Area
25 Developer Franchise Registration; (3) Citations; (4) Desist and Refrain Order; and, (5) Ancillary
26 Relief. An amended statement was filed on September 16, 2009. True and correct copies of the
27 above pleadings are attached and hereby incorporated by reference as “Exhibit A” or the
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1 “Enforcement Action”;

2 E. Pursuant to the timely request of Play N Trade, a hearing concerning the allegations
3 set forth in the Commissioner’s Enforcement Action is presently set for February 2-4 and 9-11, 2010,
4 at the Los Angeles Office of Administrative Hearings;

5
6 F. Without admitting the charges alleged in the Commissioner’s Enforcement Action,
7 Play N Trade seeks to resolve the concerns of the Commissioner and charges alleged in the
8 Enforcement Action by entering into this Stipulation and Agreement (“Agreement”);

9 NOW WHEREFORE, in consideration of the foregoing, and the terms and conditions set
10 forth herein, the Commissioner and Play N Trade (“the Parties”) agree as follows:

11 **TERMS AND CONDITIONS**

12
13 1. Purpose. The purpose of this Agreement is to resolve the concerns of the Commissioner and the
14 charges alleged in the Enforcement Action in a manner that avoids the expense of a hearing and
15 possible further court proceedings, is in the public interest, protects investors, and is consistent with
16 the purposes, policies and provisions of the California Franchise Investment Law (“FIL”).

17
18 2. Waiver of Hearing Rights. Solely as set forth in the Enforcement Action, and as otherwise set
19 forth in this Agreement, Play N Trade hereby waives the right to a hearing, and to any
20 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
21 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
22 provision of law, and by waiving such rights, Play N Trade consents to the Agreement becoming
23 final.
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25 3. Dismissal with Prejudice of Request for Administrative Hearing. Effective immediately, Play N
26 Trade withdraws its request for an administrative hearing on all pending actions referenced herein.
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1 4. Stipulations Not Binding in Third Party Actions. Play N Trade stipulates to the provisions of this
2 Agreement solely for the limited purposes of resolving the Enforcement Action and the proceeding(s)
3 that have been, or at this time may be, initiated by or brought before the Commissioner against Play
4 N Trade. This Agreement shall have no binding effect in any other case or proceeding and does not
5 preclude the parties of any such case or proceeding from considering any payment to any franchisee
6 or area developer as set-off. This Agreement is entered into solely as a matter of compromise of a
7 disputed claim. Play N Trade does not admit to any of the findings or conduct averred in the
8 Enforcement Action. Nothing in this Agreement, including the waiver of rights to appeal or seek
9 reconsideration, shall be considered as an express or implied admission of any kind. This Agreement
10 is to be construed and treated as a settlement and offer of compromise pursuant to California
11 Evidence Code section 1152.

12 5. Stipulation to Desist and Refrain Order. Play N Trade understands and agrees that the Desist and
13 Refrain Order remains in full effect and that it cannot make any statement or representation that is
14 inconsistent with this Agreement or the Desist and Refrain Order. Specifically, Play N Trade
15 stipulates to desist and refrain from the following violations of the FIL:
16

- 17 a. Making unregistered, non-exempt offers to sell a franchise in violation of Corporations
18 Code section 31110. Play N Trade agrees to not violate section 31110 by offering or selling
19 any franchise in this state unless the offer has been registered with the Commissioner or
20 exempted from registration pursuant to the provisions of the FIL;
21
22 b. Making material misstatements or omissions in a franchise registration application filed
23 with the Commissioner in violation of Corporations Code section 31200. Play N Trade
24 agrees to not violate section 31200 by willfully making any untrue statement of a material fact
25 in any application, notice or report filed with the Commissioner under the FIL, or willfully
26 omitting to state in any such application, notice or report any material fact which is required
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1 to be stated therein, or failing to notify the commissioner of any material change as required
2 by section 31123; and,

3 c. Failing to notify the Commissioner of material changes made to the terms of the registered
4 franchise offer in violation of Corporations Code section 31123. In compliance with section
5 31123, Play N Trade agrees to notify the commissioner promptly in writing, by an application
6 to amend the registration, of any material change in the information contained in the
7 application as originally submitted, amended or renewed.
8

9 6. Finality of Desist and Refrain Order. Play N Trade Franchise agrees to the finality of the Desist
10 and Refrain Order and voluntarily waives all rights to reconsideration, appeal, or other rights which
11 may be afforded pursuant to Corporations Code section 31406, or any other provision of law in
12 connection with these matters, including but not limited to Government Code sections 11521 and
13 11523, and any writ proceeding in accordance with the Code of Civil Procedure. Play N Trade
14 further agrees not to represent that this Stipulation is a withdrawal of the Desist and Refrain Order,
15 but may represent that this Agreement is a settlement of, and resolves, the charges alleged by the
16 Commissioner in the Enforcement Action.
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18 7. Payment of Citations. Play N Trade hereby agrees to pay to the Commissioner citations totaling
19 FIFTY THOUSAND DOLLARS (\$50,000) (“Citation Payment”) in full satisfaction of the citations
20 assessed in the Enforcement Action. The citations shall be paid by way of three installments. The
21 first installment payment of \$16,667 shall be due on or before February 1, 2010. The second
22 installment payment of \$16,667 is due on or before March 1, 2010. The third and final payment of
23 \$16,666 is due on or before April 1, 2010. The Citation Payment shall be paid by cashier’s check to
24 the order of the “California Department of Corporations” and must be sent via certified mail to:
25 Miranda Maison, Senior Corporations Counsel, Department of Corporations, Enforcement Division,
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1 1515 K Street, Suite 200, Sacramento, California 95814. Payments shall be deemed to be timely
2 made if deposited with the U.S. Postal Service at least one (1) business day prior to the due date and
3 mailed in accordance with this paragraph.

4
5 8. Failure to Timely Remit Citation Payments. Play N Trade acknowledges that failure to timely pay
6 any installment payment pursuant to Paragraph 7 under this Agreement shall be a breach of this
7 Agreement and shall be cause for the Commissioner to immediately revoke any registrations held by,
8 and/or deny any then-pending application(s) of Play N Trade, its successors and assigns, by whatever
9 names they might be known, and/or any company owned or controlled by Play N Trade until such
10 entire sum has been paid pursuant to this paragraph. Play N Trade hereby waives any notice and
11 hearing rights to contest such revocations and/or denial(s) which may be afforded under the FIL, the
12 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
13 provision of law in connection therewith. If Play N Trade fails to make full and timely payment in
14 accordance with Paragraph 7, then citations in the sum of \$132,500, less all amounts previously paid
15 under Paragraph 7 of this Agreement, shall be immediately due and payable to the Department
16 pursuant to the Commissioner's Enforcement Action. In the event of the failure to pay any
17 installment payment pursuant to Paragraph 7 of this Agreement, Play N Trade acknowledges that the
18 Commissioner retains all rights which may be afforded under the FIL, the California Administrative
19 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
20 therewith, to pursue collection of the full citation amount of \$132,500 plus ten percent (10%) interest
21 per annum.
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25 9. Withdrawal of Order Revoking Unit Franchise Registration. The Parties agree that this
26 Agreement shall have the effect of withdrawing the Order Revoking Unit Franchise Registration,
27 which registration was effective through April 20, 2009. The withdrawal shall become effective
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1 upon the signing by all parties to this Agreement. This withdrawal shall have no effect on the validity
2 of this Agreement. The Order Revoking Unit Franchise Registration is a public record and shall
3 remain posted on the Department of Corporation's website together with a copy of this Agreement.

4 Upon the effectiveness of this Agreement, this Agreement will also operate as a voluntary withdrawal
5 by Play N Trade of its application for unit franchise registration (renewal) filed on or about April 15,
6 2009.

7 10. Withdrawal of Order Denying Area Developer Franchise Registration Application. The Parties
8 agree that this Agreement shall have the effect of withdrawing the Order Denying Effectiveness of
9 Area Developer Franchise Registration Application. The withdrawal shall become effective upon the
10 signing by all parties to this Agreement. This withdrawal shall have no effect on the validity of this
11 Agreement. The Order Denying Area Developer Franchise Registration Application is a public
12 record and shall remain posted on the Department of Corporation's website together with a copy of
13 this Agreement. Upon the effectiveness of this Agreement, this Agreement will have the same effect
14 as allowing Play N Trade to voluntarily withdraw its application for area developer franchise
15 registration filed on or about June 27, 2008.

16 11. Future Franchise Applications. If Play N Trade files application(s) for franchise registration
17 under the FIL, it understands that such application must be made in accordance with the FIL,
18 including the disclosure document required under Corporations Code section 31114. Any application
19 filed by Play N Trade shall not be denied solely based upon the allegations set forth in the present
20 Enforcement Action, or any fact, circumstance, act or omission which the Commissioner, his counsel,
21 his investigators, or his agents had notice of in the course of the Enforcement Action or any
22 investigation relating to the Enforcement Action. Subject to the foregoing, Play N Trade understands
23 that all applications shall be considered for approval pursuant to the provisions of the FIL. In the
24 event that any affiliate disclosed in Item 1 or principal disclosed in Item 2 of any franchise
25 application previously filed by Play N Trade wishes to apply for registration of any other franchise
26 application other than Play N Trade, or any other filing, with the California Department of Corporations, the
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1 current Enforcement Action may be considered as a factor in determining the approval of such
2 registration or application in accordance with the provisions of the FIL, or any other applicable law.

3 12. Effect of Breach on Paragraphs 7, 14, and 15 on Future Franchise Filings. The Commissioner
4 hereby consents to this Agreement provided that all the conditions stipulated or expressed herein are
5 met. Play N Trade agrees that if it fails to meet the payment terms set forth in Paragraph 7 or,
6 following notice and an opportunity to cure, if applicable, Paragraphs 14 and 15, the Commissioner
7 will not allow registration of the franchise; and, any rights to a hearing regarding such registration
8 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the FIL, the
9 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
10 provision of law in connection therewith, are hereby waived.

11 13. Future Actions by the Commissioner. No future enforcement action shall be brought by the
12 Commissioner solely for any act(s) or omission(s) which are based upon the allegations set forth in
13 the present Enforcement Action, or any fact, circumstance, act or omission which the Commissioner,
14 his counsel, his investigators, or his agents had notice of in the course of the Enforcement Action or
15 any investigation relating to the Enforcement Action. The Parties acknowledge that there may be
16 facts, circumstances, acts or omissions that are unknown or of which the legal consequence is not
17 presently known, and the Commissioner acknowledges that this paragraph has been negotiated and
18 agreed upon in light of this situation. However, this Agreement shall not serve to exculpate or
19 indemnify Play N Trade or any of its affiliates, partners, employees or successors from liability for
20 any future violations of the FIL. Play N Trade acknowledges and agrees that the Agreement shall not
21 be the exclusive remedy available to the Commissioner in pursuing future violations but may be
22 sought and employed in addition to any other remedy available pursuant to the FIL.

23 14. Payments to California Unit Franchisees. Play N Trade hereby agrees to make payment to each
24 California unit franchisee as follows: \$5,000 to each franchisee that purchased only one (1) unit;
25 \$7,500 to each franchisee that purchased only two (2) units; and, \$10,000 to each franchisee that
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1 purchased three (3) or more units. In lieu of, and not in addition to the payments that are provided in
2 the preceding sentence, California unit franchisees that previously received consideration from Play
3 N Trade or another person or entity for the sale or transfer of a franchise shall each receive payment
4 of \$2,500 only. Payments owed to franchisees pursuant to this provision shall be paid in minimum
5 monthly installments of \$500 and shall be due on or before the 20th day of each month, in accordance
6 with the time frames set forth in the payment schedule attached and incorporated herein as "Exhibit
7 B." The total sum owed to each franchisee shall be paid in full no later than April 30, 2011. The
8 terms of this provision shall apply to all California unit franchisees, including any that are eligible but
9 may have been omitted from "Exhibit B," according to reasonable proof. Payment owed to any
10 franchisee that cannot be reasonably located by Play N Trade within 180 days of execution of this
11 Agreement shall escheat to the State of California. Unless Play N Trade receives written notice of a
12 change not less than 30 days prior to the issuance of a payment, all payments shall be sent to each
13 active unit franchisee at their "Play N Trade" store and payments shall be sent to all former unit
14 franchisees to the last address provided to Play N Trade by the franchisee.

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18 15. Payments to California Area Developer Franchisees. Play N Trade hereby agrees to make
19 payment in the amount of \$25,000, or in the amount of the actual franchise fee paid by the franchisee,
20 whichever is less, to each California area developer franchisee. Payments owed to area developer
21 franchisees pursuant to this provision shall be paid in minimum monthly installments of \$500 and
22 shall be due on or before the 20th day of each month, in accordance with the time frames set forth in
23 the payment schedule attached and incorporated herein as "Exhibit B." The total sum owed to each
24 franchisee shall be paid in full no later than April 30, 2011. The terms of this provision shall apply to
25 all California area developer franchisees, including any that are eligible but may have been omitted
26 from "Exhibit B," according to reasonable proof. Payment owed to any franchisee that cannot be
27 reasonably located by Play N Trade within 180 days of execution of this Agreement shall escheat to
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1 the State of California. Unless Play N Trade receives written notice of a change not less than 30 days
2 prior to the issuance of a payment, all payments shall be sent to each active area developer to the
3 address currently used by Play N Trade and payments to former area developers shall be sent to the
4 last address provided to Play N Trade by the franchisee.

5 16. Failure to Timely Make Payments to California Franchisees. Play N Trade acknowledges that
6 failure to timely issue any payment pursuant to Paragraphs 14 and 15 above shall be, unless cured, a
7 breach of this Agreement and, following written notice thereof from the Commissioner and fifteen
8 (15) calendar days to cure any such breach or provide evidence of payment, shall be cause for the
9 Commissioner to immediately revoke any registrations held by, and/or deny any pending
10 application(s) of Play N Trade, its successors and assigns, by whatever names they might be known,
11 and/or any company owned or controlled by Play N Trade. Play N Trade hereby waives any notice
12 and hearing rights to contest such revocations and/or denial(s) which may be afforded under the FIL,
13 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
14 provision of law in connection therewith. If Play N Trade fails to make complete and timely
15 payment in strict accord with the terms of Paragraphs 14 and 15, then Play N Trade must
16 immediately pay each unit franchisee the entire amount of the initial franchise fees actually paid by
17 the franchisee to Play N Trade, less any amounts paid under Paragraphs 14 or 15, as applicable.

18 17. Compliance Reports. Play N Trade agrees to submit a quarterly report to the Commissioner
19 listing the issuance dates and check numbers of all payments made to every California franchisee in
20 compliance with Paragraphs 14 and 15 ("Compliance Report"). The first Compliance Report must be
21 filed with the Commissioner no later than April 15, 2010. Thereafter, each quarterly Compliance
22 Report will be due on or before the fifteenth day of the months of April, July, October and January,
23 until all sums are paid in full pursuant to Paragraphs 14 and 15, and as set forth in "Exhibit B."
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1 Compliance Reports must be sent via certified mail to: Miranda Maison, Senior Corporations
2 Counsel, Department of Corporations, Enforcement Division, 1515 K Street, Suite 200, Sacramento,
3 California 95814. Compliance Reports shall be deemed to be timely delivered if deposited with the
4 U.S. Postal Service at least one (1) business day prior to the due date and mailed in accordance with
5 this paragraph.
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7 18. Right of California Franchisees to Terminate Franchise Agreements. By delivery of this
8 Agreement to each current California franchisee as provided in Paragraph 26, Play N Trade hereby
9 offers to each such California franchisee the option to terminate its franchise agreement without cost
10 under the franchise agreement, provided that franchisee complies with the termination obligations set
11 forth on "Exhibit C," attached hereto and incorporated herein. Any franchisee that elects to terminate
12 its franchise agreement pursuant to this provision must sign a mutual general release effective
13 through the date of this Agreement and inform Play N Trade in writing by not later than March 1,
14 2010, and thereafter comply with the termination obligations set forth in "Exhibit C" within thirty
15 (30) calendar days following notice of termination, unless otherwise specified in "Exhibit C."
16 Further, Play N Trade agrees to fully forgive and waive all due but unpaid royalties, transfer or
17 renewal fees, and/or administration costs owed by each self-terminating franchisee as of the effective
18 date of this Agreement.

19 19. Waiver of Transfer Fees. Play N Trade represents that it has not collected transfer fees from a
20 California franchisee during the period of April 14, 2009 through the date of execution of this
21 Agreement. In support of this representation to the Commissioner, true copies of the Declarations of
22 Larry Plotnick, Charles Franklin, Gabriel Willey and Edwin Shen are attached and hereby
23 incorporated by reference as "Exhibit D." Play N Trade agrees to waive its right to assess and
24 collect transfer or assignment fees from any California franchisee that has transferred or assigned its
25 store(s) or territories, with or without the consent of Play N Trade, during the period of April 14,
26 2009 through the date of execution of this Agreement. Additionally, Play N Trade agrees to waive its
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1 right to assess or collect any transfer or assignment fees from any California franchisee that elects to
2 transfer or assign its store(s) or territories within one year (365 days) from the date of execution of
3 this Agreement. Any franchisee that elects to exercise such option pursuant to this provision must
4 complete the transaction and inform Play N Trade in writing of such election no later than one year
5 (365 days) from the date of execution of this Agreement. This paragraph shall not serve in any way
6 to limit or restrict Play N Trade from compensating area developers for any franchise transfer or
7 assignment executed pursuant to this paragraph provided such compensation is not collected directly
8 from the transferring franchisee.
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10 20. Extension of Franchise Agreement. Upon notice as described below, Play N Trade agrees to
11 automatically extend the current term of the franchise agreement for all current California franchisees
12 for up to three (3) years (the “Extension Term”) at no cost to the franchisee. The Extension Term
13 shall extend the date of the expiration of the current term of a franchisee’s franchise agreement and is
14 not a “renewal” of the franchise agreement. Thus, all conditions precedent to franchise renewal,
15 including signing the then-current franchise agreement and remodeling obligations, are not a
16 condition to a franchisee electing to extend the term of its franchise agreement as provided in this
17 paragraph. Play N Trade further agrees that upon a franchisee exercising its right under this
18 paragraph, all other terms and conditions of the applicable franchise agreement shall remain in effect,
19 unmodified, including the royalty rate, advertising and promotion fees, minimum sales requirements,
20 and “renewal” rights. Any franchisee that elects to extend the term of its franchise agreement
21 pursuant to this paragraph must inform Play N Trade in writing of the same and specify the period of
22 the Extension Term, which shall not exceed three (3) years, no later than one year (365 days) from
23 the date of execution of this Agreement.
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25 21. Franchise Law Compliance Education. Play N Trade shall complete annual franchise-law
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1 compliance training through the International Franchise Association (“IFA”). Required annual
2 education shall consist of no less than eight (8) hours of live training by an IFA-approved educator
3 (live training may be conducted by video or audio conference where all parties can be heard) on the
4 subject of franchisor compliance with state and federal laws. Each principal officer and employee
5 identified in Item 2 of the then-current (i.e., current as of the date training is obtained) Uniform
6 Franchise Disclosure Document filed by Play N Trade in California, and any in-house legal counsel
7 or compliance officer(s) employed by Play N Trade, are required to complete the annual training, at
8 the expense of Play N Trade. An IFA-certified roster of attendees evidencing the annual education
9 requirements have been met by every person subject to this provision shall be filed with the
10 Commissioner no later than April 15, 2010; and an updated roster shall be filed along with any
11 franchise registration renewal application each year thereafter. This provision shall be in effect until
12 December 31, 2014. Notwithstanding the foregoing, persons that are corporate directors of Play N
13 Trade and that are neither employees nor officers of Play N Trade listed in Item 2 shall not be
14 required to complete annual training.

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18 22. Commissioner’s Duties. Play N Trade acknowledges and agrees that nothing contained in this
19 Agreement shall operate to limit the Commissioner’s ability to assist any other agencies with any
20 administrative, civil or criminal prosecution brought by any such agency against Play N Trade based
21 upon any of the activities alleged in this matter or otherwise. Play N Trade further agrees that this
22 Agreement shall not bind or otherwise prevent any other federal, state or county agency from the
23 performance of its duties.

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25 23. Settlement Agreement Coverage. The Parties hereby acknowledge and agree that this
26 Agreement is intended to constitute a full, final and complete resolution of the Enforcement Action
27 referenced above. Play N Trade understands and agrees that this Agreement pertains only to Play N
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1 Trade and is not intended by the Parties to address or resolve any of the enforcement actions taken by
2 the Commissioner against any other respondent named in "Exhibit A," including Yakety Yak
3 Wireless, Inc., Yuvi Shmul and Thomas C. Bozarth.

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5 24. Commissioner's Attorneys' Fees and Expenses. Play N Trade agrees that this Agreement shall
6 not go into effect unless and until the Commissioner receives a cashier's check from Play N Trade in
7 the sum of FIFTEEN THOUSAND DOLLARS (\$15,000) for reasonable attorneys' fees and
8 investigative expenses incurred in the Department's investigation and litigation of the Enforcement
9 Action. The check shall be made payable to the "California Department of Corporations" and must
10 be sent via certified mail to: Miranda Maison, Senior Corporations Counsel, Department of
11 Corporations, Enforcement Division, 1515 K Street, Suite 200, Sacramento, California 95814.

12
13 25. Effective Date. This Agreement shall not become effective until Play N Trade has tendered full
14 payment of Attorney's Fees pursuant to Paragraph 24 above, and the Agreement has been signed and
15 delivered by all parties. Subject to the foregoing, the effective date of this Agreement shall be
16 January 15, 2010. The Commissioner shall file this Agreement with the Office of Administrative
17 Hearings five days (5) after execution by the parties.

18
19 26. Service of Agreement to Franchisees. Play N Trade agrees to make reasonable efforts to send by
20 certified mail a complete copy of this Agreement, including all Exhibits attached hereto, to every
21 former and current California franchisee within thirty (30) days of the effective date of this
22 Agreement. No later than thirty (30) days thereafter, Play N Trade shall provide the Commissioner
23 with a list identifying the names and addresses of each franchisee that was served a copy of this
24 Agreement in compliance with this provision. Any correspondence that is returned as undeliverable
25 shall also be specified in the report to the Commissioner required under this provision.
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28 27. Material Modification. The Parties acknowledge that certain terms of this Agreement require

1 Play N Trade to solicit a modification of a franchise agreement in California and, if accepted by the
2 applicable franchisee, may constitute the sale or modification of franchise agreement, each of which
3 would require registration under the FIL (including Corporations Code section 31125) absent an
4 exemption. The Commissioner and Play N Trade agree that the modifications to franchise
5 agreements required by this Agreement are offered on a voluntary basis and do not substantially and
6 adversely impact the franchisee's rights, benefits, privileges, duties, obligations or responsibilities
7 under the franchise agreement. Thus, Play N Trade and the Commissioner agree that registration of
8 any modification expressly specified in this Agreement is not required under Corporations Code
9 section 31125(d).
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12 28. Full Integration. This Agreement, including the attached exhibits, is the final written expression
13 and the complete and exclusive statement of all the agreements, conditions, promises,
14 representations, and covenants between the parties with respect to the subject matter hereof, and
15 supersedes all prior or contemporaneous agreements, negotiations, representations, understandings,
16 and discussions between and among the parties, their respective representatives, and any other person
17 or entity. Each of the parties represents, warrants, and agrees that in executing this Agreement it has
18 relied solely on the statements set forth herein and has placed no reliance on any statement,
19 representation, or promise of any other party, or any other person or entity not expressly set forth
20 herein, or upon the failure of any party or any other person or entity to make any statement,
21 representation or disclosure of anything whatsoever. The parties have included this clause: (1) to
22 preclude any claim that any party was in any way fraudulently induced to execute this Agreement;
23 and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the
24 terms of this Agreement.
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28 29. No Presumption From Drafting. In that the parties have had the opportunity to draft, review and

1 edit the language of this Agreement, no presumption for or against any party arising out of drafting
2 all or any part of this Agreement, or the request or denial of any particular proposed provision in
3 negotiations, will be applied in any action relating to, connected, to, or involving this Agreement.
4 Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor or
5 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted
6 most strongly against the party who caused the uncertainty to exist.
7

8 30. Counterparts. This Agreement may be executed in any number of counterparts by the parties and
9 when each party has signed and delivered at least one such counterpart to the other party, each
10 counterpart shall be deemed an original and taken together shall constitute one and the same
11 Agreement.
12

13 31. Modifications and Qualified Integration. No amendment, change or modification of this
14 Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the
15 parties affected by it.
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17 32. Headings and Governing Law. The headings to the paragraphs of this Agreement are inserted for
18 convenience only and will not be deemed a part hereof or affect the construction or interpretation of the
19 provisions hereof. This Agreement shall be construed and enforced in accordance with and governed
20 by California law.
21

22 33. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it has
23 received independent legal advice from an attorney with respect to the advisability of executing this
24 Agreement.
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26 34. Authority for Settlement. Each party covenants that they possess all necessary capacity and
27 authority to sign and enter into this Agreement. Each party warrants and represents that such party is
28 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without

1 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to enter
2 into the covenants, and undertake the obligations set forth herein.

3 35. Public Record. Play N Trade acknowledges that this Agreement, and the attachments thereto, is
4 a public record.
5

6 36. Voluntary Agreement. The parties each represent and acknowledge that he, she or it is executing
7 this Agreement completely voluntarily and without any duress or undue influence of any kind from
8 any source.

9 37. Notices. Notice shall be provided to each party at the following addresses:

10
11 If to Respondent: Larry Plotnick, President
12 Play N Trade Franchise, Inc.
13 131 Calle Iglesia, Suite 200
San Clemente, California 92672

14 If to the Commissioner: Miranda Maison, Senior Corporations Counsel
15 Department of Corporations
16 1515 K Street, Suite 200
Sacramento, California 95814

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1 IN WITNESS WHEREOF, the parties hereto have approved and executed this Agreement on the
2 dates set forth opposite their respective signatures.

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Dated: 1/11/10

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
ALAN S. WEINGER
Deputy Commissioner
Enforcement Division

PLAY N TRADE FRANCHISE, INC.

Dated: Jan 11, 2010

By: _____
LARRY PLOTNICK
President and Chief Executive Officer

Dated: 1/11/10

Approved as to form by: _____
JONATHAN C. SOLISH, ESQ.
Bryan Cave, LLP
Attorneys for Respondent Play N Trade
Franchise, Inc.

Dated: 1/11/10

Approved as to form by: _____
ANTHONY J. MARKS, ESQ.
Bryan Cave, LLP
Attorneys for Respondent Play N Trade
Franchise, Inc.