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7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11	In the Matter of)	
12)	
13	THE COMMISSIONER)	(1) DESIST AND REFRAIN ORDER
14	OF BUSINESS OVERSIGHT OF)	PURSUANT TO CORPORATIONS
15	THE STATE OF CALIFORNIA,)	CODE SECTION 31402
16)	
17	Complainant,)	(2) CLAIM FOR ANCILLARY RELIEF
18)	PURSUANT TO CORPORATIONS
19	v.)	CODE SECTION 31408
20	QUICK MART HOLDINGS, INC. doing)	
21	business as QUICKMART THE MINI)	
22	MARKET and LORD BRICE)	
23	BARRINGTON,)	
24)	
25	Respondents.)	

26 Jan Lynn Owen, the Commissioner of the California Department of Business Oversight
27 (“Commissioner”), finds the following:

28 **I. STATEMENT OF FACTS**

1. Beginning in or about December 2013, Quick Mart Holdings, Inc. doing business as QuickMart The Mini Market (hereafter, “Quick Mart”) is or was a business entity purporting to be a

1 California sole proprietorship with a mailing address of P.O. Box 34823, Los Angeles, California,
2 90034. Quick Mart also maintains a website at www.quickmartstores50000.com.

3 2. On March 5, 2014, Quick Mart registered as a Nevada corporation with the California
4 Secretary of State and reported a business address of 10541 National Boulevard, Suite 15, Los
5 Angeles, California, 90035.

6 3. At all relevant times, Lord Brice Barrington, formerly known as Xavier Alonzo Graham
7 (“Barrington”), was the president, director, and a control person of Quick Mart.

8 4. Commencing in or about December 2013, Quick Mart and Barrington has offered and sold
9 convenience store franchises to California residents. The Quick Mart website and promotional
10 materials state: “PURCHASE YOUR FRANCHISE TODAY!” Quick Mart offers “turnkey franchise
11 business opportunities that will allow you to own and operate your very own store in a city or state
12 you choose for as little as \$250,000.”

13 5. The Quick Mart website tells interested franchisees that a \$10,000 “first payment launches
14 the purchase” and is required to initiate the location scouting phase of the program. The website
15 further advises that “Quick Mart Holdings Company does not offer any refunds of any kind. Any
16 payment as a deposit payment made to QMHC will go towards the total purchase price of your new
17 store or store conversion.”

18 6. A Quick Mart brochure further states, “[T]he entire process is a turnkey venture from
19 location scouting to complete construction.” In addition to the right to use the Quick Mart service
20 mark, franchisees are promised an opportunity to operate two additional franchises in their territories
21 and receive “extensive training on all elements of the retail convenience store industry through [the
22 Quick Mart] operations manual, in store support, and monthly performance and evaluation reports.”

23 7. In or about December 2013, Quick Mart and Barrington offered and/or sold a Quick Mart
24 franchise to a California resident named M.K. In consideration for the opportunity to purchase a
25 Quick Mart franchise, M.K. paid an initial fee of \$3,000.00.

26 8. At the time of purchase, Barrington provided M.K. with a Quick Mart franchise agreement
27 that appeared to have language that was cut-and-pasted from a Uniform Franchise Disclosure
28 Document (UFDD) of another franchisor.

II. VIOLATION OF CORPORATIONS CODE SECTION 31110

(Failure to Register Offer of Franchise)

9. The Commissioner is responsible for administering and enforcing the California Franchise Investment Law, and registering the offer and sell of franchises in California, pursuant to Division 5 (commencing with section 31000) of Title 4 of the Corporations Code.

10. Corporations Code section 31110 states it is unlawful for a person to offer or sell any franchise in this state unless the offer of the franchise has been registered under the California Franchise Investment Law or is exempt.

11. To register a franchise, a franchisor must file a Uniform Franchise Registration Application, along with a proposed offering circular, for review and approval, in accordance with Corporations Code sections 31111 and 31114 and Title 10 of the California Code of Regulations (“CCR”) sections 310.111 and 310.114.1.

12. The Commissioner finds that Quick Mart failed to register the franchise by failing to file a franchise registration application with the Department of Business Oversight (“Department”) in violation of Corporations Code sections 31110, 31111 and 31114 and Title 10, CCR, sections 310.111 and 310.114.

III. VIOLATION OF CORPORATIONS CODE SECTION 31201

(Misrepresentations of Material Facts)

13. Corporations Code section 31001 sets forth that a franchisor shall provide each prospective franchisee with the information necessary to make an informed decision on whether to purchase the franchise being offered.

14. Pursuant to the franchise registration and disclosure guidelines adopted by the North American Securities Administrators Association (“NASAA Guidelines”), franchisors must disclose the identity of the franchisor, its parents, affiliates, and persons with management responsibility as well as specified information concerning the business experience and litigation histories of the franchisor’s principal officers.

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1 15. Corporations Code section 31201 provides:

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

5 16. Beginning as early as December 2013, Quick Mart and Barrington made misrepresentations
6 and omissions of material fact in connection with the offer and sale of a Quick Mart franchise in this
7 state, including but not limited to the following:

- 8 a. Failing to disclose that Quick Mart was not registered to offer or sell franchises in
9 California;
- 10 b. Failing to disclose that Quick Mart was not incorporated in any state until February
11 2014 or registered with the California Secretary of State until March 2014; and,
- 12 c. Failing to disclose to potential franchisees the business experience and litigation
13 histories of Quick Mart, its affiliates and principal officers, including Barrington and
14 Quick Mart’s treasurer and director, Will Conley.

15 **V. DESIST AND REFRAIN ORDER**

16 17. California Corporations Code section 31402 provides in relevant part:

17 If, in the opinion of the commissioner, the offer of any franchise is subject
18 to registration under this law and it is being, or it has been, offered for sale
19 without the offer first being registered, the commissioner may order the
20 franchisor or offeror of that franchise to desist and refrain from the further
21 offer or sale of that franchise unless and until the offer has been duly
22 registered under this law. If, after the order has been made, a request for a
23 hearing is filed in writing within 60 days from the date of service of the
order by the person on to whom the order was directed, a hearing shall be
held in accordance with Chapter 5 (commencing with Section 11500) of
Part 1 of Division 3 of Title 2 of the Government Code.

24
25 If that person fails to file a written request for hearing within 60 days of
26 the date of service of the order, the order shall be deemed a final order of
the commissioner and shall not be subject to review by any court or
agency, notwithstanding Section 31501.

27 18. The California Commissioner of Business Oversight finds that the “turnkey
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1 franchise business opportunities” offered and sold by Quick Mart and Barrington constitute franchises
2 within the meaning of California Corporations Code section 31005.

3 19. The California Commissioner of Business Oversight further finds that the offer
4 and sale of Quick Mart franchises has not been registered under the California Franchise Investment
5 Law and is not exempt under Chapter 1, beginning with California Corporations Code section 31100,
6 of that law.

7 20. Based on the foregoing findings, the California Commissioner of Business Oversight is of the
8 opinion that Quick Mart Holdings, Inc. doing business as QuickMart the Mini Market and Lord Brice
9 Barrington have engaged in the offer and sale of franchises in this state that is subject to registration
10 under the California Franchise Investment Law without the offers first being registered, in violation of
11 California Corporations Code section 31110.

12 21. Pursuant to California Corporations Code section 31402, Quick Mart Holdings, Inc. doing
13 business as QuickMart the Mini Market and Lord Brice Barrington are hereby ordered to desist and
14 refrain from the further offer or sale of franchises, including but not limited to “turnkey franchise
15 business opportunities” in Quick Mart Holdings, Inc. doing business as QuickMart the Mini Market,
16 unless and until the offers have been duly registered under the California Franchise Investment Law or
17 unless exempt.

18 22. Additionally, the California Commissioner of Business Oversight is of the opinion that Quick
19 Mart Holdings, Inc. doing business as QuickMart the Mini Market and Lord Brice Barrington engaged
20 in the offer and sale of franchises in this state by means of a written or oral communication which
21 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
22 make the statements made, in light of the circumstances under which they were made, not misleading
23 in violation of section 31201 of the Corporations Code.

24 23. Pursuant to section 31402 of the Corporations Code, Quick Mart Holdings, Inc. doing business
25 as QuickMart the Mini Market and Lord Brice Barrington are hereby ordered to desist and refrain
26 from the further offer or sale of franchises, including but not limited to Quick Mart franchises, by
27 means of a written or oral communication which includes an untrue statement of a material fact or
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1 omits to state a material fact necessary in order to make the statements made, in light of the
2 circumstances under which they were made, not misleading.

3 **VI. ANCILLARY RELIEF**

4 24. Corporations Code section 31408 provides in relevant part:

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

12 25. Item 5 of the NASAA Guidelines requires a franchisor to disclose all “Initial Fees” and
13 the conditions under which these fees are refundable. “Initial Fees” are defined as:

14 [A]ll fees or payments, or commitments to pay, for services or goods received from
15 the franchisor or any affiliate before the franchisee’s business opens, whether
16 payable in lump sums or installments.

17 26. Pursuant to Corporations Code section 31408, Quick Mart and Barrington shall disgorge all
18 initial fees, as defined by the NASAA Guidelines, that were collected from California residents and/or
19 franchisees during any period that the franchisor has not been registered with the Department, in
20 violation of the California Franchise Investment Law, including but not limited to disgorgement in
21 the amount of \$3,000.00 to California resident M.K.

22 27. The disgorgement shall be made payable and delivered to each California resident and/or
23 franchisee no later than 60 days from the date of the order in this matter. Quick Mart and Barrington
24 shall file a report with Miranda LeKander, Senior Corporations Counsel on or before May 31, 2014,
25 to demonstrate compliance with this order. In paying the disgorgement, the franchisor shall not
26 require the franchisee to waive any provision of the California Franchise Investment Law in
27 accordance with Corporations Code section 31512.

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1 This Order is necessary, in the public interest, for the protection of investors and consistent
2 with the purposes, policies and provisions of the California Franchise Investment Law.

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4 Dated: March 20, 2014
5 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

6 By _____
7 MARY ANN SMITH
8 Deputy Commissioner
9 Enforcement Division
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