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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Safe Step Walk-In Tub Co.
Michael L. Duffer
1650 Elm Hill Pike, Suite 5
Nashville, Tennessee 37210

DESIST AND REFRAIN ORDER
(For violations of section 31110 of the California Corporations Code)

The California Corporations Commissioner finds that:

1. At all relevant times, Safe Step Walk-In Tub Co. (hereafter “Safe Step”) was a Tennessee corporation formed in June 2008. Safe Step’s principal place of business is located at 1650 Elm Hill Pike, Suite 5, Nashville, Tennessee, 37210.
2. At all relevant times, Michael L. Duffer (“Duffer”) was the owner and president of Safe Step.
3. At all relevant times, Safe Step maintained a website at www.safesteptub.com. The Safe Step website states: “We sell and professionally install soaking and walk in tubs throughout Los Angeles, California and the surrounding areas.”
4. Beginning in or about July 2010, Safe Step and Duffer offered and/or sold franchises to California residents pursuant to “Dealership/License” agreements. The agreements grant the “dealer” the right to sell, install and service Safe Step’s safety bathtubs and related products in an exclusive territory under Safe Step’s distinctive name and trademarks.
5. Under the “Dealership/License” agreements, dealers agree to pay a “onetime License Fee” for the grant of an exclusive territory and rights to use Safe Step’s trademark name and logo. Further,

1 dealers are restricted from selling competitive products and may be required to meet monthly
2 minimum sales. Subject to additional fees and commissions, dealers can request training and access
3 Safe Step product catalogs and sales promotion materials.

4
5 6. The “Dealership/License” agreements offered and sold by Safe Step constitute franchises
6 within the meaning of California Corporations Code section 31005.

7
8 7. The offer and sale of Safe Step franchises in California have not been registered under the
9 Franchise Investment Law and are not exempted under Chapter 1, beginning with California
10 Corporations Code section 31100, of that law.

11 8. California Corporations Code section 31402 provides in relevant part:

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

22
23 If that person fails to file a written request for hearing within 60 days of
24 the date of service of the order, the order shall be deemed a final order of
25 the commissioner and shall not be subject to review by any court or
26 agency, notwithstanding Section 31501.

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28 Based on the foregoing findings, the California Corporations Commissioner is of the opinion
29 that Safe Step Walk-In Tub Co. and Michael L. Duffer have engaged in the offer and sale of
30 franchises in this state that are subject to registration under the Franchise Investment Law without the
31 offers first being registered, in violation of California Corporations Code section 31110. Pursuant to
32 California Corporations Code section 31402, Safe Step Walk-In Tub Co. and Michael L. Duffer are

1 hereby ordered to desist and refrain from the further offer or sale of franchises unless and until the
2 offers have been duly registered under the Franchise Investment Law or unless exempt.

3 This Order is necessary, in the public interest, for the protection of investors and consistent
4 with the purposes, policies and provisions of the Franchise Investment Law.
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6 Dated: October 10, 2012

JAN LYNN OWEN
California Corporations Commissioner

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9 By _____
10 Mary Ann Smith
11 Deputy Commissioner
12 Enforcement Division
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1 MARY ANN SMITH
Deputy Commissioner
2 MIRANDA LEKANDER (CA BAR NO. 210082)
3 Senior Corporations Counsel
Department of Corporations
4 1515 K Street, Ste. 200
5 Sacramento, California 95814
6 Telephone: (916) 322-8730
Facsimile: (916) 445-6985
7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of THE CALIFORNIA)
CORPORATIONS COMMISSIONER,) STIPULATION TO ENTRY OF DESIST AND
13) REFRAIN ORDER
Complainant,)
14)
15 vs.)
16 SAFE STEP WALK-IN TUB CO. and)
MICHAEL L. DUFFER,)
17)
18 Respondents.)
19)
20

21 In resolution of an inquiry into the offer and sale of unregistered franchises within the State of
22 California, and without admitting or denying such activities, IT IS HEREBY STIPULATED AND
23 AGREED between Safe Step Walk-In Tub Co. and Michael L. Duffer (collectively, "Respondents")
24 and the California Corporations Commissioner ("Commissioner") as follows:

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1 1. Respondents stipulate to the issuance of the Desist and Refrain Order, in the form
2 attached hereto as Exhibit A, directing Respondents to desist and refrain from the further offer and
3 sale of unregistered franchises in violation of the California Franchise Investment Law (Corporations
4 Code § 31000 *et seq.*).

5 2. Respondents hereby waive all rights to any hearing or appeal of the Desist and Refrain
6 Order.

7 3. Respondents stipulate that the delivery by certified mail of the executed Desist and
8 Refrain Order issued by the Commissioner to its counsel, Kim A. Lambert, Esq., shall constitute
9 valid service of the Order.

10 4. No later than 30 days from the date of execution of this Stipulation, Respondents agree
11 to file a notice of exemption and pay the fees prescribed under the California Franchise Investment
12 Law for each exempt Safe Step Walk-In Tub Co. franchise currently operating in this state, whether
13 called a “dealership,” “distributorship,” or “license.”

14 5. Respondents acknowledge that remedies for violations of the Franchise Investment
15 Law are not exclusive and may be sought and employed in any combination to enforce the purpose
16 and provisions of this law.

17 6. Respondents agree that nothing in this Stipulation shall preclude the Commissioner, or
18 her agents or employees, to the extent authorized by law, from assisting or cooperating in any
19 investigation and/or action brought by any other federal, state or county agency. Respondent further
20 agrees that this Stipulation shall not bind or otherwise prevent any other federal, state or county
21 agency from the performance of its duties.

22 7. Respondents enter into this Stipulation voluntarily and without coercion and
23 acknowledge that no promises, threats or assurances have been made by the Commissioner or any
24 officer, or agent thereof, about this Stipulation.

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1 8. Respondents and the Commissioner agree that this Stipulation may be executed in one or
2 more separate counterparts, each of which when so executed, shall be deemed an original. Such
3 counterparts shall together constitute and be one and the same instrument.

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Dated: 10/10/12

JAN LYNN OWEN
California Corporations Commissioner

By _____
Mary Ann Smith
Deputy Commissioner

SAFE STEP WALK-IN TUB CO.

Dated: 10/4/12

By _____
Michael L. Duffer, President
Individually and on behalf of Safe Step Walk-In Tub Co.

Approved as to Form and Content

Dated: 10/8/12

By _____
Kim A. Lambert, Esq.
Attorney on behalf of Michael L. Duffer and Safe Step Walk-In Tub Co.