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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	FIL ORG. ID.: 42564
)	
THE COMMISSIONER OF BUSINESS OVERSIGHT,)	FIRST AMENDED CITATIONS INCLUDING:
)	(1) DESIST AND REFRAIN ORDER;
Complainant,)	(2) ASSESSMENT OF ADMINISTRATIVE
v.)	PENALTIES; AND
)	
SOLARA360 LLC; WILLIAM DORN BEATTIE,)	(3) ATTORNEYS' FEES
)	
Respondents.)	
)	
)	

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

I
Introduction

1. Solara360, LLC (“Solara360”) was formed on October 22, 2012 as a Nevada Limited Liability Company. Solara360’s principal business address is 1927 Boblett Street, Blaine, Washington 98230. At all relevant times, the company maintained a website at www.solara360.com.

1 compensated using investor money when in fact, he paid himself a \$70,000.00 annual salary using
2 investor money in violation of section 50(1)(d) of the Securities Act; (c) filed false or misleading
3 information with the British Columbia Securities Commission in violation of section 168.1(b); and
4 (d) traded Solara Technologies securities in violation of the Cease Trade Order.

5 8. After a hearing on the matter, on June 23, 2010, the British Columbia Securities
6 Commission issued a Decision (the “Decision”) requiring Solara Technologies to cease trading
7 securities and/or exchange contracts and ordered Beattie to:

- 8 (a) resign from any position as a director or officer of any issuer, other than Solara
9 Technologies and any issuer all the securities of which are owned beneficially by
10 him or members of his immediate family; and
11 (b) pay a \$50,000.00 administrative penalty.

12 9. Further, Beattie was prohibited for 5 years from:

- 13 (a) trading securities and/or exchange contracts for up to 5 years, except for his own
14 account;
15 (b) acting as a director or officer of any issuer other than Solara;
16 (c) acting in a management or consultative capacity in connection with activities in
17 the securities market; and
18 (d) engaging in investor relations activities.

19 10. The Decision further required Beattie and Solara Technologies to obtain a variation
20 from the Decision before advertising, soliciting, and negotiating financing for Solara Technologies’
21 business.

22 11. On March 9, 2011, the British Columbia Securities Commission issued a variation
23 order approving Beattie as a director and officer of Solara AdWorks, Inc. and allowing Beattie and
24 Solara AdWorks to engage in conduct for the purpose of obtaining financing for its business.
25 Beattie signed an undertaking that he would not trade in the securities of Solara AdWorks, Inc. for 5
26 years, until June 23, 2015, unless first obtaining the British Columbia Securities Commission’s
27 approval.

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B.

Manitoba Securities Commission Takes Action Against Solara Technologies and Beattie

12. On June 1, 2011, the Manitoba Securities Commission issued an Order (the “Order”) requiring Solara Technologies to cease trading in securities indefinitely. The Order required Beattie to:

- (a) cease trading in securities until June 23, 2015, except for his own account;
- (b) resign from any position as a director or officer of any issuer;
- (c) cease acting as a director or officer of any issuer, other than Solara, Solara AdWorks, and any issuer of the securities of which are owned beneficially by him or members of his immediate family until June 23, 2015; and
- (d) obtain a variation of the Order before advertising, soliciting, and negotiating, for the purposes of obtaining financing.

C.

Solara360 Applies For Franchise Registration Without Disclosing British Columbia Securities Commission Decision or Manitoba Securities Commission Order

13. On November 4, 2013, Solara360 filed a Franchise Registration Application with the Department pursuant to section 31111 (the “Initial Application”). The Initial Application disclosed Beattie as Solara360’s President and CEO.

14. Applicants are required to disclose whether any officer is subject to an effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and related to the franchise or to a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

15. Solara360 failed to disclose the British Columbia Decision and Manitoba Order in its Initial Application.

16. Applicants are further required to identify, on a Franchise Seller Disclosure Form, all persons who will solicit, offer, or sell franchises in California. Applicants are required to disclose whether any sales person:

Is subject to a currently effective injunction or restrictive order or decree resulting from a pending or concluded action brought by a public agency

1 and relating to the franchise, or to a Federal, State or Canadian franchise,
2 securities, antitrust, trade regulation or trade practice law

3 17. Solara360 submitted a Franchise Seller Disclosure Form for Beattie. The above
4 question was answered “No.”

5 18. An officer of the applicant is required to review the Franchise Disclosure Document
6 and certify its accuracy to the Commissioner. Beattie signed the following notarized certification on
7 behalf of Solara360, dated November 8, 2013:

8 I certify and swear under penalty of perjury of law that I have read and
9 know the contents of this application, including the Franchise Disclosure
10 Document with an issuance date of October 9, 2013, attached as an exhibit,
11 and that all material facts stated in all those documents are accurate and
12 those documents do not contain any material omissions. I further certify
13 that I am duly authorized to make this certification on behalf of the
14 Franchisor and that I do so upon my personal knowledge.

15 19. The Department issued an order allowing Solara360 to offer and sell franchises in
16 California on November 8, 2013. Under this order, Solara360’s franchise registration was effective
17 through April 21, 2014.

18 D.

19 Solara360 Offers To Sell Unregistered Franchises In California

20 20. Under the FIL, it is unlawful to offer or sell any franchise in the State of California
21 unless the offer has been registered, or is exempt from registration.

22 21. On or around October 15, 2013, before Solara360 filed its Initial Application with the
23 Department, Beattie offered to sell Solara360 franchises to California residents.

24 E.

25 Solara360 Provides Prospective Franchisee With Unlawful Financial Performance Representations

26 22. Franchisors who wish to provide prospective franchisees with information regarding
27 the actual or potential financial performance of its franchised and/or franchised-owned outlets must
28 include the representations in the Franchise Disclosure Document and obtain the Commissioner’s
approval prior to providing prospective franchisees with these projections.

23 23. Franchisors who do not wish to provide prospective franchisees with financial
24 performance information may include a negative disclosure in the Franchise Disclosure Document

1 stating that they “do not make any representations about a franchisee’s future financial performance
2 or the past financial performance.”

3 24. Solara360’s November 4, 2013 Initial Application contained the following negative
4 disclosure:

5 The Franchisor makes no representations about a franchisee’s future financial performance or
6 the past financial performance of company-owned or franchised outlets, nor do they
7 authorize any employee or representative to make any such representations either orally or in
8 writing. If you are purchasing an existing outlet, however, they may provide you with the
9 actual records of that outlet. If you receive any other financial performance information or
10 projections of your future income, you should report it to the their [sic] management by
11 contacting Dorn Beattie at 1927 Boblett St., Blaine, Washington, 98230.”

12 25. On or around October 15, 2013, Beattie held a telephone conference pitching the
13 business to prospective franchisees, including California residents. Immediately after the call,
14 Beattie provided potential California franchisees with a powerpoint presentation summarizing the
15 meeting. One of the powerpoint slides, entitled “Show me the money!” referenced an accompanying
16 excel spreadsheet, which Beattie referred to as the “Sector Financial Tool.” The Sector Financial
17 Tool projected that franchisees would achieve \$38,500.00 in monthly gross income, \$462,000.00 in
18 annual gross revenue, and over \$2.3 million in the first 60 months. The fillable Sector Financial Tool
19 allowed franchisees to change the inputs to re-calculate the financial performance projections.

20 III

21 **Citations and Desist and Refrain Order** 22 **Violation of Corporations Code Sections 31110 and 31200**

23 26. Corporations Code section 31110 provides:

24 On and after April 15, 1971, it shall be unlawful for any person to offer or
25 sell any franchise in this state unless the offer of the franchise has been
26 registered under this part or exempted under Chapter 1 (commencing with
27 Section 31100) of this part.

28 27. Corporations Code section 31200 provides:

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

1 application, notice, or report any material fact which is required to be
2 stated therein, or fail to notify the commissioner of any material change as
3 required by Section 31123.

4 28. Based upon the foregoing findings, the Commissioner is of the opinion that Beattie
5 and Solara360, have engaged in the offer of a franchise in this state that was subject to registration
6 under the FIL without the offer being registered, in violation of Corporations Code section 31110.

7 **CITATION A:** On or around October 15, 2013 Beattie and Solara360 offered to sell unregistered
8 franchises to California residents in violation of Corporations Code section 31110.

9 29. Based upon the foregoing findings, the Commissioner is of the opinion that Beattie
10 and Solara360, in violation of section 31200, willfully made untrue statements of material fact in an
11 application filed with the Commissioner or omitted to state material facts which were required to be
12 stated in an application filed with the Commissioner including the following:

13 **CITATION B:** Solara360 and Beattie failed to disclose the June 23, 2010 British Columbia
14 Securities Commission Decision in the Initial Application filed with the Department on November 4,
15 2013.

16 **CITATION C:** Solara360 and Beattie failed to disclose the June 1, 2011 Manitoba Order in the
17 Initial Application filed with the Department on November 4, 2013.

18 **CITATION D:** Solara360’s Initial Application stated that it would not provide prospective
19 franchisees with financial performance representations. Beattie, on behalf of Solara360, provided
20 prospective franchisees with financial performance representations without the Commissioner’s
21 prior approval and contrary to statements made to the Commissioner in Solara360’s Initial
22 Application.

23 Pursuant to section 31406, Beattie and Solara360 are hereby cited and ordered to desist and
24 refrain from further violations of section 31110 and 31200.

25 30. This order is necessary, in the public interest, for the protection of franchisees and
26 consistent with the purposes, policies and provisions of the FIL.

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IV
Administrative Penalties

31. 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.

32. Pursuant to section 31406, Solara360 is hereby assessed and ordered to pay an administrative penalty of \$10,000.00, which consists of a penalty of \$2,500.00 for each of the four violations of the FIL recited above.

33. The administrative penalties in the amount stated above shall be made payable to the Department of Business Oversight and submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 60 days from the date of this order.

34. This order is necessary, in the public interest, for the protection of investors and franchisees and consistent with the purposes, policies and provisions of the Franchise Investment Law.

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V

Attorney’s Fees

35. Corporations Code section 31408 provides:

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

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

36. Pursuant to section 31408, Solara360 and Beattie shall pay attorney’s fees to the Department of Business Oversight in the amount of \$3,000.00, or according to proof. The amount awarded for attorney’s fees shall be made payable to the Department of Business Oversight and submitted to Danielle A. Stoumbos, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344, no later than 60 days from the date of this order.

Dated: May 27, 2016
Sacramento, California

JANN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division